

THE
SPIRIT
OF
LAWS.

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put in
Glasgow
1748

Translated from the FRENCH of

^{Charles Louis}
M. DE SECONDAT,
^{de la Brède et}
BARON DE MONTESQUIEU,

Born
1689
Died
1755

By Mr. NUGENT.

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..... *Prolem sine matre creatam.*

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considerably improved,

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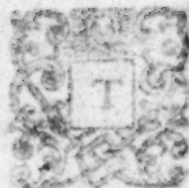
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TRANSLATOR

TO THE
READER

Rec. Oct. 13, 1905



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THE
TRANSLATOR
TO THE
READER.



THE following work may with the strictest justice be said to have done honour to human nature as well as to the great abilities of the author. The wisest and most learned men, and those most distinguished by birth and the elevation of their stations, have, in every country in Europe, considered it as a most excellent performance. And may we be permitted to add, that a sovereign prince † as justly celebrated for his probity and good sense, as for his political and military skill,

† *The present King of Sardinia.*

has declared that from M. de Montesquieu he has learnt the art of government. But had the illustrious author received no such distinguished honour, the numerous editions of this work in French, and their sudden spreading through all Europe, are a sufficient testimony of the high esteem with which it has been received by the public.

But notwithstanding the deserved applause which has been so liberally bestowed on the author, there have been some who have not only endeavoured to blast his laurels, but have treated him with all that scurrility which bigotry and superstition are apt, on every occasion, to throw out against truth, reason and good sense. These M. de Montesquieu has himself answered, in a separate treatise intitled, *A defence of the Spirit of Laws*, from whence we have thought proper to extract, for the sake of such as have not seen that treatise, the principal of those objections, and the substance of what has been given in reply: Only first observing, that this defence is divided into three parts, in the first of which he answers the general reproaches that have been thrown out against him; in the second he
replies

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replies to particular reproaches; and in the third, he gives some reflections on the manner in which his work has been criticized.

The author first complains of his being charged both with espousing the doctrines of Spinoza, and with being a Deist, two opinions directly contradictory to each other. To the former of these he answers, by placing in one view the several passages in the Spirit of Laws directly levelled against the doctrines of Spinoza; and then he replies to the objections that have been made to those passages, upon which this injurious charge is founded.

The critic asserts that our author stumbles at his first setting out, and is offended at his saying, *that Laws in their most extensive signification, are the necessary relations derived from the nature of things.* To this he replies, that the critic had heard it said that Spinoza had maintained that the world was governed by a blind and necessary principle; and from hence on seeing the word *necessary*, he concludes that this must be Spinosism; tho' what is most surprizing, this article is directly levelled at the dangerous principles maintained by Spinoza: That he had Hobbes's system in

his eye, a system, which, as it makes all the virtues and vices depend on the establishment of human laws, and as it would prove that men were born in a state of war, and that the first law of nature is a war of all against all, overturns, like Spinoza, all religion, and all morality. Hence he laid down this position, that there were laws of justice and equity before the establishment of positive laws: hence also he has proved that all beings had laws; that even before their creation they had possible laws; and that God himself had laws, that is, the laws which he himself had made. He has shewn * that nothing can be more false than the assertion that men were born in a state of war; and has made it appear that wars did not commence till after the establishment of society. His principles are here extremely clear; from whence it follows, that as he has attacked Hobbes's errors, he has consequently attacked those of Spinoza; and he has been so little understood, that they have taken for the opinions of Spinoza, those very objections which were made against Spinosism.

Book I. Chap. I.

I

Again,

Again, the author has said *that the creation which appears to be an arbitrary act, supposes laws as invariable as the fatality of the Atheists.*

From these words the critic concludes that the author admits the fatality of the Atheists.

To this he answers, that he had just before destroyed this fatality, by representing it as the greatest absurdity to suppose that a blind fatality was capable of producing intelligent beings. Besides, in the passage here censured, he can only be made to say what he really does say: he does not speak of causes, nor does he compare causes; but he speaks of effects and compares effects. The whole article, what goes before and what follows, make it evident, that there is nothing here intended but the laws of motion; which, according to the author, had been established by God: these laws are invariable; this he has asserted, and all natural philosophy has asserted the same thing; they are invariable because God has been pleased to make them so, and because he has pleased to preserve the world. When the author therefore says that the creation which appears to be an arbitrary act, supposes laws as invariable as the fatality

fatality of the Atheists, he cannot be understood to say that the creation was a necessary act like the fatality of the Atheists.

Having vindicated himself from the charge of Spinosism, he proceeds to the other accusation, and from a multitude of passages collected together proves that he has not only acknowledged the truth of revealed religion; but that he is in love with Christianity, and endeavours to make it appear amiable in the eyes of others. He then enquires into what his adversaries have said to prove the contrary, observing that the proofs ought to bear some proportion to the accusation; that this accusation is not of a frivolous nature, and that the proofs therefore ought not to be frivolous.

The first objection is, that he has praised the Stoics, who admitted a blind fatality, and that this is the foundation of natural religion. To this he replies, " I will for a moment suppose that this false manner of reasoning has some weight: has the author praised the philosophy and metaphysics of the Stoics? He has praised their morals, and has said that the people reaped great benefit from them: he has said this,
" and

“ and he has said no more : I am mistaken,
 “ he has said more, he has at the beginning
 “ of his book attacked this fatality, he does
 “ not then praise it, when he praises the
 “ Stoics.

The second objection is, that he has
 praised Bayle, in calling him a great man.
 To this he answers, “ It is true that the au-
 “ thor has called Bayle a great man, but he
 “ has censured his opinions: if he has censured
 “ them, he has not espoused them : and since
 “ he has censured his opinions, he does not
 “ call him a great man because of his opini-
 “ ons. Every body knows that Bayle had a
 “ great genius which he abused; but this ge-
 “ nius which he abused, he had : the au-
 “ thor has attacked his sophisms, and pities
 “ him on account of his errors. I don’t love
 “ the men who subvert the laws of their
 “ country; but I should find great difficulty
 “ in believing that Cæsar and Cromwell had
 “ little minds : I am not in love with con-
 “ querors, but it would be very difficult to
 “ persuade me to believe that Alexander and
 “ Jenghiz-Khan were men of only a common
 “ genius. Besides, I have remarked, that

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“the declamations of angry men make but
“little impression on any except those who
“are angry: the greatest part of the readers
“are men of moderation, and seldom take
“up a book but when they are in cool blood;
“for rational and sensible men love reason.
“Had the author loaded Bayle with a thou-
“sand injurious reproaches, it would not
“have followed from thence, that Bayle had
“reasoned well or ill; all that his readers
“would have been able to conclude from it
“would have been, that the author knew
“how to be abusive.”

The third objection is, that he has not
in his first chapter, spoken of original sin.
To which he replies: “I ask every sensible
“man if this chapter is a treatise of divinity?
“if the author had spoken of original sin, they
“might have imputed it to him as a crime
“that he had not spoken of redemption.”

The next objection takes notice, that “The
author has said that in England self-murder
is the effect of a distemper, and that it can-
not be punished without punishing the effects
of madness; the consequence the critic draws
from thence is, that a follower of natural
religion

religion can never forget that England is the cradle of his sect, and that he rubs a sponge over all the crimes he found there." He replies, "The author does not know that England is the cradle of natural religion; but he knows that England was not his cradle. He is not of the same religious sentiments as an Englishman, any more than an Englishman who speaks of the physical effects he found in France, is not of the same religion as the French. He is not a follower of natural religion; but he wishes that his critic was a follower of natural logic."

These are the principal objections levelled against our author, on this head, from which our readers will sufficiently see on what trifling, what puerile arguments this charge of Deism is founded. He concludes however this article, with a defence of the religion of nature, and such a defence as every rational Christian must undoubtedly approve.

Before I conclude this first part, I am tempted to make one objection against him who has made so many; but he has so
"stunned

“stunned my ears with the words *follower of*
“*natural religion*, that I scarcely dare pro-
“nounce them. I shall endeavour however
“to take courage. Do not the critic’s two
“pieces stand in greater need of an explica-
“tion, than that which I defend? Does he
“do well, while speaking of natural religion
“and revelation, to fall perpetually upon one
“side of the subject, and to lose all traces of
“the other? Does he do well never to di-
“stinguish those who acknowledge only the
“religion of nature, from those who ac-
“knowledge both natural and revealed reli-
“gion? Does he do well to turn frantic
“whenever the author considers man in the
“state of natural religion, and whenever he
“explains any thing on the principles of na-
“tural religion? Does he do well to con-
“found natural religion with Atheism? Have
“I not heard that we have all natural reli-
“gion? Have I not heard that Christianity
“is the perfection of natural religion? Have
“I not heard that natural religion is em-
“ployed to prove the truth of revelation
“against the Deists? and that the same na-
“tural religion is employed to prove the ex-
“istence

“istence of a God against the Atheists? He
 “has said that the Stoics were the followers
 “of natural religion; and I say, that they
 “were Atheists, since they believed that a
 “blind fatality governed the universe; and
 “it is by the religion of nature that we
 “ought to attack that of the Stoics. He
 “says that the scheme of natural religion is
 “connected with that of Spinoza; and I say,
 “that they are contradictory to each other,
 “and it is by natural religion that we
 “ought to destroy Spinoza’s scheme. I say,
 “that to confound natural religion with
 “Atheism, is to confound the proof with
 “the thing to be proved, and the objec-
 “tions against error with error itself, and
 “that this is to take away the most powerful
 “arms we have against this error.”

The author now proceeds to the second
 part of his defence, in which he has the fol-
 lowing remarks. “What has the critic done
 “to give an ample scope to his declamations,
 “and to open the widest door to invectives?
 “he has considered the author, as if he had
 “intended to follow the example of M. Ab-
 “badye, and had been writing a treatise on
 “the

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“ the Christian religion : he has attacked
“ him, as if his two books on religion were
“ two treatises on divinity ; he has cavilled
“ against him, as if while he had been talk-
“ ing of any religion whatsoever which was
“ not Christian, he should have examined it
“ according to the principles, and doctrines
“ of Christianity ; he has judged him as if
“ in his two books relating to religion he
“ ought to have preached to Mahometans
“ and Idolaters the doctrines of Christianity.
“ Whenever he has spoken of religion in
“ general, whenever he has made use of
“ the word religion, the critic says, that is
“ the Christian religion ; whenever he has
“ compared the religious rites of different
“ nations and has said that they are more
“ conformable to the political government of
“ these countries than some other rites, the
“ critic again says, you approve them then
“ and abandon the Christian faith : when he
“ has spoken of a people who have never em-
“ braced Christianity, or who have lived
“ before Christ, again says the critic, you
“ don't then acknowledge the morals of
“ Christianity ; when he has canvassed any
“ custom

“ custom whatsoever, which he has found
“ in a political writer, the critic asks him,
“ Is this a doctrine of Christianity? He
“ might as well add, You say you are a ci-
“ vilian, and I will make you a divine in
“ spite of yourself: you have given us
“ elsewhere some very excellent things on
“ the Christian religion, but this was only
“ to conceal your real sentiments, for I know
“ your heart, and penetrate into your
“ thoughts. It is true I do not understand
“ your book, nor is it material that I
“ should discover the good or bad design
“ with which it has been written; but I
“ know the bottom of all your thoughts:
“ I don't know a word of what you have
“ said, but I understand perfectly well, what
“ you have not said.”

But to proceed. The author has maintain-
ed that polygamy is necessarily and in its own
nature bad; he has wrote a chapter expressly
against it, and afterwards has examined in a
philosophical manner, in what countries, in
what climates, or in what circumstances it is
least pernicious; he has compared climates
with climates, and countries with countries,
and

and has found, that there are countries, where its effects are less pernicious than in others; because, according to the accounts that have been given of them, the number of men and women not being every where equal, it is evident, that if there are places where there are more women than men, polygamy, bad as it is in itself, is there less pernicious than in others. But as the title of this chapter * contains these words, *That the law of polygamy is an affair of calculation*, they have seized this title as an excellent subject for declamation. Having repeated the chapter itself, against which no objection is made, he proceeds to justify the title and adds: “ Polygamy is an affair of calculation when we would know, if it is more or less pernicious in certain climates, in certain countries, in certain circumstances than in others; it is not an affair of calculation when we would decide whether it be good or bad in itself. It is not an affair of calculation when we reason on its nature; it may be an affair of calculation when we combine its effects; in short, it is never an affair

* Book xvi. Chap. 4.

“ of calculation when we enquire into the
“ end of marriage, and it is still less so,
“ when we enquire into marriage as a law
“ established and confirmed by Jesus Christ.

Again, the author having said, that * polygamy is more conformable to nature in some countries than in others, the critic has seized the words *more conformable to nature*, to make him say, that he approves polygamy. To which he answers, “ If I say, that I should
“ like better to have a fever than the scurvy,
“ does this signify that I should like to have
“ a fever ? or only that the scurvy is more
“ disagreeable to me than a fever ?”

Having finished his reply to what had been objected on the subject of polygamy, he vindicates that excellent part of his work which treats of the climates ; when speaking of the influence these have upon religion, he says, “ I am very sensible that religion is in its
“ own nature independent of all physical
“ causes whatsoever, that the religion which is
“ good in one country is good in another,
“ and that it cannot be pernicious in one
“ country without being so in all ; but yet,

* Book xvi. Chap. 4.

a

“ I say,

“ I say, that as it is practised by men, and
 “ has a relation to those who do not practise
 “ it, any religion whatsoever will find a
 “ greater facility in being practised, either
 “ in the whole or in part, in certain coun-
 “ tries than in others, and in certain cir-
 “ cumstances than in others, and that who-
 “ ever says the contrary must renounce all
 “ pretensions to sense and understanding.”

But the critic has been greatly offended by
 our author's saying, * *that when a state is at
 liberty to receive or to reject a new religion,
 it ought to be rejected; when it is received, it
 ought to be tolerated.* From hence he ob-
 jects, that the author has advised idola-
 trous princes, not to admit the Christian re-
 ligion into their dominions. To this he an-
 swers first by referring to a passage in which
 he says, † *that the best civil and political laws
 are, next to Christianity, the greatest blessings
 that men can give or receive;* and adds, “ If
 “ then Christianity is the first and greatest
 “ blessing, and the political and civil laws the
 “ second, there are no political or civil laws
 “ in any state that can or ought to hinder
 “ the entrance of the Christian religion.”

* Book xxv. Ch. 10.

† Ibid. Ch. 1. His

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His second answer is, " That the religion
 " of heaven is not established by the same
 " methods as the religions of the earth; read
 " the history of the church, and you will
 " see the wonders performed by the Christian
 " religion: was she to enter a country, she
 " knew how to open its gates; every instru-
 " ment was able to effect it; at one time God
 " makes use of a few fishermen, at another
 " he sets an emperor on the throne, and
 " makes him bow down his head under the
 " yolk of the gospel. Does Christianity
 " hide herself in subterranean caverns? stay
 " a moment, and you see an advocate speak-
 " ing from the imperial throne on her
 " behalf. She traverses, whenever she pleases,
 " seas, rivers, and mountains; no obstacles
 " here below can stop her progress: implant
 " aversion in the mind, she will conquer this
 " aversion: establish customs, form habits,
 " publish edicts, enact laws, she will triumph
 " over the climate, over the laws which
 " result from it, and over the legislators who
 " have made them. God acting according
 " to decrees which are unknown to us,
 " extends or contracts the limits of his
 " religion.

He next proceeds to vindicate what he has said on celibacy; but as another writer who has done justice to this work, has set the ill consequences attending the celibacy of the clergy in a stronger light, than it would perhaps have been prudent for any gentleman in France to have done, we shall beg leave to insert a paragraph or two from him.

“ The doctrine of the perfection of celibacy, says he, has produced the same destructive effects, in Europe, as the heat of the climate, the jealousy of commanders, and the slavery of the women have produced in Asia. According to the most exact observations, a state that suffers neither pestilence, nor war, nor famine, doubles the number of its inhabitants every sixty years. This being granted, every kingdom which contains an hundred thousand monks, loses every sixty years, two hundred thousand men, and a much greater number if an hundred thousand monks are always kept on foot. Thus supposing that they have had in France since the year 1640, two millions of souls who have taken the vow of celibacy, this kingdom
“ has

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“ has lost these two millions who have
“ been unuseful during their life, four mil-
“ lions which would have been produced by
“ them in the space of an hundred and
“ twenty years, two millions which would
“ have proceeded from the children of the
“ first, from the year 1690 to the year 1750,
“ and two millions which would be produced
“ by the children of the two last millions
“ from the year 1750 to the year 1810. In
“ all ten millions, a loss which though
“ immense is real; because the two millions
“ upon which I build this computation may
“ reasonably be supposed to be sheltered from
“ the miseries of war and famine, and to
“ propagate in full security: from hence it
“ follows that France having only twenty
“ million of souls, tho’ it ought without
“ the obstacle of celibacy to have thirty mil-
“ lions by the year 1810, it loses one third of
“ the force it might acquire. Can we then be
“ astonished that states formerly extremely
“ populous should be now thinly inhabited?

“ Cast an eye on the infinite number of
“ persons who in the two last ages have taken
“ the vow of celibacy. Compute the descend-

“ants they would have had in this space.
 “To avoid all dispute add only to the gene-
 “rative number, a number equal to it, and
 “you will find that they would be equal to
 “all Europe. What would they be, if you
 “were to attempt to calculate the progres-
 “sive course of generations. Your imagi-
 “nation would create immense multitudes
 “which celibacy has annihilated. What
 “would they be if you considered this sub-
 “ject with the eye of faith, according to this
 “principle, that all the people upon earth,
 “who are commonly computed an hundred
 “millions, are all descended from one man,
 “created about six thousand years ago; you
 “will very readily find, that even a dozen
 “men who at the beginning of Christianity
 “embraced celibacy, might very well deprive
 “the world of as many millions of inhabi-
 “tants as it at this day contains.

These are some of the principal objections
 that have been made to the Spirit of Laws;
 objections which however weak and trifling,
 have been uttered with the zeal of a blind
 bigot, who seeks to pervert what he does not
 understand. Truth and good sense always meet
 with

with enemies, and tho' expressed in the strongest and clearest manner, will be misinterpreted by the ignorant; and attacked, censured and vilified by those, who, blinded by zeal or prejudice, are resolved to see every thing thro' a false medium. The author has, however, done ample justice to his own work, and has sufficiently cleared his reputation from all the aspersions that have been thrown upon it; we shall therefore conclude this preface with the third part of his defence, which, as it consists of some excellent reflections on the manner in which the Spirit of Laws has been criticised, and as it may be of use to direct the judgment of future critics, we shall give intire, and without abbreviation.

“ We have seen in the two first parts, that
 “ all that results from so many bitter criticisms is this, that the author of the Spirit
 “ of Laws has not performed his work
 “ according to the plan and the views of his
 “ critics; and that if his critics had wrote
 “ upon the same subject, they would have
 “ inserted in it a great number of things
 “ with which they were acquainted. It
 “ appears also that they are divines, and the

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“ author is a civilian ; that they think them-
“ selves able to perform his business, and
“ that he does not think himself fit for theirs,
“ In short, it follows, that instead of attack-
“ ing him with such asperity, they would
“ have done better to have felt the value of
“ what he has said in favour of religion ;
“ which he has equally respected and de-
“ fended : I shall now make some reflec-
“ tions.

“ That manner of reasoning is not good,
“ which being employed against any good
“ book whatsoever, will make it appear as
“ bad as the worst book whatsoever ; and
“ which being employed against any bad
“ book whatsoever, may make it appear as
“ good as the best book whatsoever.

“ That manner of reasoning is not good,
“ which to those things that are the subject
“ of dispute, calls in others that are foreign
“ to the purpose, and which confounds the
“ several sciences and the principles of each
“ science.

“ We ought not to dispute upon a work
“ built upon a science, from reasons that
“ may be brought against the science itself.

“ When

“ When we criticise a work, and particularly a large work, we ought to endeavour to obtain a particular knowledge of the science of which it treats, and carefully to read the approved authors who have already wrote on that science, to the end that we may be enabled to see if the author has deviated from the common and received manner of treating the subject.

“ When an author explains himself by his words, or by writings, which are the image of words, it is contrary to reason to quit the exterior signs of his thoughts, in order to search into his thoughts themselves; because there are none besides himself who know his thoughts: it is much worse when his thoughts are good, and they attribute to him those that are bad.

“ When we write against an author, and become incensed against him, we should prove the qualifications by the things, and not the things by the qualifications.

“ When we find in an author a good intention in general, we shall be more rarely deceived, if in certain places which appear equivocal, we judge according to
“ the

“ the general intention, than if we impute
“ to him a particular bad intention.

“ In books designed for amusement, three
“ or four pages may give an idea of the style,
“ and the perfection of the work: in books
“ of argumentation, we see nothing if we
“ do not see the whole chain.

“ As it is extremely difficult to make a
“ good work, and extremely easy to criticise
“ upon it, because the author has had all
“ the passes to guard, and the critic has but
“ one to force; it is necessary that this last
“ should never be in the wrong: and if it
“ happens that he is continually wrong, he
“ must be inexcusable.

“ Besides, as the criticism may be confi-
“ dered as an ostentation of his superiority
“ over others, and its ordinary design is to
“ gratify human pride, those who deliver
“ themselves up to this gratification, always
“ deserve to be treated with equity, but sel-
“ dom with indulgence.

“ And as of all the different kinds of
“ writing, this is that in which it is most
“ difficult to shew a good natural disposition,
“ care should be taken not to encrease by

“ the asperity of the expressions, the disagreeableness of matter.

“ When a person writes on great subjects, it is not sufficient that he consults his zeal; he should also consult his abilities; and if heaven has not granted us great talents, we may supply them by a distrust of ourselves, by accuracy, labour, and reflection.

“ That art of finding, in what has naturally a good meaning, all the bad meanings, which a mind accustomed to false reasoning can give, is of no service to mankind; those who practise it resemble the ravens who shun living bodies, and fly on all sides in search of carcases.

“ This conduct, when observed in criticism, produces two very great inconveniences: the first is, that it spoils the minds of the readers, by a mixture of true and false, good and bad: they accustom themselves to search for a bad sense in things that naturally have a very good one; from whence it becomes easy to pass to a disposition to search for a good sense in things that have naturally a bad one; it makes them lose the ability of reasoning justly, by throwing
“ ing

“ ing them into all the subtilties of false lo-
 “ gic. The second mischief is, that render-
 “ ing by this manner of reasoning, the
 “ good suspected, they have no other arms
 “ to enable them to attack the worst and
 “ most pernicious performances ; by which
 “ means the public lose the very rules by
 “ which they might distinguish them. If
 “ they treat as Spinofists and as Deists those
 “ that are not so, what will they say to those
 “ who are ?

“ Tho’ we ought readily to think that the
 “ men who write against us, upon subjects
 “ in which all mankind are concerned, are
 “ determined to this conduct by the force of
 “ Christian charity ; nevertheless as the na-
 “ ture of this virtue will scarcely permit it to
 “ be concealed, as it shews itself in us in
 “ spite of ourselves, and shines and sparkles
 “ on all sides ; if it happened that in two
 “ pieces both wrote against the same person,
 “ one upon the back of another, there could
 “ be found no trace of this charity, that it
 “ did not appear in any phrase, in any turn,
 “ any word, any expression ; he who had
 “ wrote such works would have just reason

“ to fear his not being influenced by Christian
“ charity.

“ And as the virtues purely human, are in
“ us the effect of what is called good nature ;
“ if it was impossible to discover any vestige
“ of this good nature, the public might from
“ thence conclude that these writings were
“ not the effect of human virtues.

“ In the eyes of men, actions are always
“ more sincere than motives ; and it is more
“ easy for them to believe that the act of ut-
“ tering the most cruel invectives is evil, than
“ to persuade them that the motive which
“ made them utter them is good.

“ When a man is placed in a situation
“ which creates a respect for religion, and in
“ which religion entitles him to respect, and
“ attacks before the men of the world, one
“ of their own body ; it is absolutely neces-
“ sary, that he should maintain, by his
“ manner of acting, the superiority of his
“ character. The world is very corrupt ;
“ but there are certain passions which even
“ in the world are under a great restraint ;
“ there are favourites which forbid the others
“ appearing. Consider the men of the world
“ in

“ in respect to each other, there is nothing
“ so timid; this arises from a pride which
“ durst not discover its secret motions, and
“ which from the respect it has for others,
“ lets go its hold in order to recover it again.
“ Christianity gives us the habit of subduing
“ this pride; the world gives us the habit of
“ concealing it. With the few virtues we
“ have, what would become of us, if the
“ whole soul was set at liberty, and if we
“ were not attentive to the least words, the
“ least signs, and the least gestures? Now
“ when persons of a respectable character dis-
“ cover passions which the men of the world
“ durst not suffer to appear, these begin to
“ believe themselves better than they really
“ are. This is an evil of very great con-
“ sequence.

“ We men of the world are so frail that
“ we deserve to be treated with the extremest
“ circumspection and address: for when they
“ let us see all the exterior marks of violent
“ passions, what would they have us think
“ of their minds? Can they hope that we,
“ with our ordinary rash way of judging,
“ shall not be tempted to judge?

“ They

“ They might have remarked in disputes
“ and conversations what happens amongst
“ that part of mankind whose spirits are
“ rough and untractable: as they do not
“ combat to assist, but to throw each other
“ to the earth, they fly from truth, not in
“ proportion to the greatness or littleness of
“ their souls; but to the greater or the less
“ degree of that caprice or inflexibility which
“ constitutes their characters. The contrary
“ happens to those to whom nature or education
“ have given a sweetness of temper: as their
“ disputes are mutual helps, as they center in
“ the same object, as they think differently only
“ that they may arrive at the same sentiments,
“ they find truth according to their abilities.

“ When a man writes on religious subjects,
“ he ought not to depend so far on the piety
“ of his readers, as to say what is contrary to
“ good sense; because, to gain credit with
“ those who have more piety than knowledge,
“ he will gain discredit from those who have
“ more knowledge than piety.

“ And as religion, when let alone, is capable
“ of defending herself, she loses more
“ when ill defended, than when she is not
“ defended at all.

“ If

“ If it should happen that a man, after
“ having lost his readers, should attack any
“ one who had gained some reputation, and
“ by that method should find the means of
“ being read ; it might perhaps be suspected
“ that under the pretence of sacrificing this
“ victim to religion, he sacrificed him to his
“ self-love.

“ That manner of criticism of which we
“ are speaking, is of all things in the world,
“ the most capable of limiting the extent, and
“ of diminishing, if I may presume to make
“ use of this term, the sum total of rational
“ genius. Theology has its bounds and set
“ forms ; because the truths it teaches being
“ known, it is necessary that men should ad-
“ here to them ; and they ought to be hin-
“ dered from wandering : it is here that ge-
“ nius ought not to take its flights ; it is cir-
“ cumscribed, if I may be allowed the ex-
“ pression, within an enclosure. But it would
“ be making a jest of mankind to put the
“ same enclosure about those who treat of
“ human sciences. The principles of geometry
“ are most true ; but if they were applied to
“ things of taste, they would make reason
“ itself

“ itself talk nonsense. Nothing stifles a doctrine
“ so effectually, as wrapping up every thing
“ in a doctor’s gown : the men who would
“ always teach, are great obstacles to learn-
“ ing ; there is no genius which they do not
“ contract, when they overwhelm it with a
“ million of frivolous scruples. If you have
“ the best intentions in the world, they will
“ force you to suspect them ; you can no longer
“ be employed in speaking well, when you
“ are perpetually terrified with the fear of
“ speaking ill ; and when instead of pursuing
“ your thoughts, you are only employed in
“ finding out such terms as may escape the
“ subtilty of the critics. They come to put a
“ *biggin* on our heads, and to repeat at every
“ word, Take care of falling. You would
“ speak like yourself, I will have you speak
“ like me. Do you attempt to soar aloft, they
“ stop you by pulling your sleeve : have you
“ life and vigour, they scratch you out of it :
“ do you rise a little, there are men, who
“ taking a foot rule, and holding up their
“ heads cry, Come down that we may mea-
“ sure you : do you run your race, they
“ would have you observe all the stones which
“ their trifling forms have placed in your
“ way.

. b

“ way. No science, no literature can escape
“ this pedantry : for our age has formed aca-
“ demicians who would make us enter the
“ schools of the darkest and most ignorant
“ times. Descartes may properly give cou-
“ rage to those, who with a genius infinitely
“ less than his, have as good intentions : this
“ great man was perpetually accused of
“ Atheism ; and yet there are not at this day
“ stronger arguments employed against the
“ Atheists than he himself produced.

“ As to the rest, we ought not to regard
“ criticisms as personal, except in the case
“ where those who make them would render
“ them so. It is extremely proper that per-
“ sons should be permitted to criticise the
“ works that have been given to the public,
“ because it would be ridiculous, for those
“ who have been willing to enlighten others,
“ not to be willing to be enlightened them-
“ selves. Those who inform us are the com-
“ panions of our labours : if both the critic
“ and the author seek the truth, they are in
“ the same interest ; for as truth is the pro-
“ perty of all men ; they will be confederates
“ and not enemies.

P R E F A C E.

IF amidst the infinite number of subjects contained in this book, there is any thing, which contrary to my expectation, may possibly offend, I can at least assure the public, that it was not inserted with an ill intention: For I am not naturally of a captious temper. Plato thanked the Gods, that he was born in the same age with Socrates: and for my part, I give thanks to the Supreme, that I was born a subject of that government under which I live; and that it is his pleasure I should obey those, whom he has made me love.

I beg one favor of my readers, which I fear will not be granted me; this is, that they will not judge by a few hours reading, of the labour of twenty years; that they will approve or condemn the book entire, and not a few particular phrases. If they would search

into the design of the author, they can do it no other way so completely, as by searching into the design of the work.

I have first of all considered mankind; and the result of my thoughts has been, that amidst such an infinite diversity of laws and manners, they were not solely conducted by the caprice of fancy.

I have laid down the first principles, and have found that the particular cases follow naturally from them; that the histories of all nations are only consequences of them; and that every particular law is connected with another law, or depends on some other of a more general extent.

When I have been obliged to look back into antiquity, I have endeavoured to assume the spirit of the ancients, lest I should consider those things as alike, which are really different; and lest I should miss the difference of those which appear to be alike.

I have not drawn my principles from my prejudices, but from the nature of things.

Here a great many truths will not appear, till we have seen the chain which connects them with others. The more we enter into particulars,

lars, the more we shall perceive the certainty of the principles on which they are founded. I have not even given all these particulars, for who could mention them all without a most insupportable fatigue?

The reader will not here meet with any of those bold flights, which seem to characterize the works of the present age. When things are examined with ever so small a degree of extent, the sallies of imagination must vanish; these generally arise from the mind's collecting all its powers to view only one side of the subject, while it leaves the other unobserved.

I write not to censure any thing established in any country whatsoever. Every nation will here find the reasons on which its maxims are founded; and this will be the natural inference, that to propose alterations, belongs only to those who are so happy as to be born with a genius capable of penetrating into the entire constitution of a state.

It is not a matter of indifference, that the minds of the people be enlightened. The prejudices of the magistrate have arisen from national prejudice. In a time of ignorance they have committed even the greatest evils

without the least scruple; but in an enlightened age they even tremble, while conferring the greatest blessings. They perceive the ancient abuses; they see how they must be reformed; but they are sensible also of the abuses of the reformation. They let the evil continue, if they fear a worse; they are content with a lesser good, if they doubt of a greater. They examine into the parts, to judge of them in connection; and they examine all the causes to discover their different effects.

Could I but succeed so as to afford new reasons to every man to love his prince, his country, his laws; new reasons to render him more sensible in every nation and government of the blessings he enjoys, I should think myself the most happy of mortals.

Could I but succeed so as to persuade those who command, to increase their knowledge in what they ought to prescribe; and those who obey, to find a new pleasure resulting from their obedience; I should think myself the most happy of mortals.

The most happy of mortals should I think myself, could I contribute to make mankind recover from their prejudices. By prejudices, I

here mean, not that which renders men ignorant of some particular things, but whatever renders them ignorant of themselves.

It is in endeavouring to instruct mankind, that we are best able to practise that general virtue, which comprehends the love of all. Man, that flexible being, conforming in society to the thoughts and impressions of others, is equally capable of knowing his own nature, whenever it is laid open to his view; and of losing the very sense of it, when this idea is banished from his mind.

Often have I begun, and as often have I laid aside this undertaking. I have a thousand times given the leaves I have written, to the * winds: I every day felt my paternal hands fall †. I have followed my object without any fixed plan: I have known neither rules nor exceptions; I have found the truth, only to lose it again. But when I had once discovered my first principles, every thing I sought for appeared; and in the course of twenty years, I have seen my work begun, growing up, advancing to maturity, and finished.

* *Ludibria ventis.*

† *Ter patriæ recidero manus*

*If this work meets with success, I shall owe it chiefly to the grandeur and majesty of the subject. However I do not think that I have been totally deficient in point of genius. When I have seen what so many great men both in France, England and Germany have said before me, I have been lost in admiration; but I have not lost my courage: I have said with Corregio, And I also am a * painter.*

** Ed io anche son pittore.*



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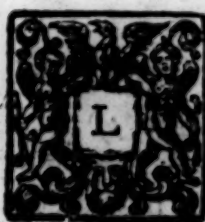


THE
S P I R I T
OF
L A W S.



BOOK I.
Of Laws in General.

CHAP. I.
Of the relation of Laws to different Beings.



L A W S in their most general significance, are the necessary relations resulting from the nature of things. In this sense all beings have their laws, the Deity has * his laws, the material world its laws, the intelligences superior to man have their laws, the beasts their laws, man his laws.

Those who assert that a blind fatality produced the various effects we behold in this world, are guilty of a very great absurdity; for can any thing be more absurd than to pretend that a blind fatality could be productive of intelligent Beings?

* Law, says Plutarch, is the queen of the Gods and men. See his treatise entitled, *The necessity of a Prince being a man of learning.*

VOL. I.

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BOOK
I. ✓
Chap. I.

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There is then a primitive reason; and laws are the relations which subsist between it and different beings, and the relations of these beings among themselves.

God is related to the universe as creator and preserver; the laws by which he created all things, are those by which he preserves them. He acts according to these rules because he knows them; he knows them because he made them; and he made them because they are relative to his wisdom and power.

As we see that the world, tho' formed by the motion of matter, and void of understanding, subsists thro' so long a succession of ages, its motions must certainly be directed by invariable laws: and could we imagine another world, it must also have constant rules, or must inevitably perish.

Thus the creation which seems an arbitrary act, supposeth laws as invariable as those of the fatality of the Atheists. It would be absurd to say, that the Creator might govern the world without those rules, since without them it could not subsist.

These rules are a fixt and invariable relation. In bodies moved the motion is received, increased, diminished, lost, according to the relations of the quantity of matter and velocity; each diversity is *uniformity*, each change is *constancy*.

Particular intelligent beings may have laws of their own making, but they have some likewise which they never made. Before there were intelligent beings, they were possible; they had therefore possible relations, and consequently possible laws. Before laws were made, there were relations of possible

OF LAWS.

3
Book
I.
Chap. I.

sible justice. To say that there is nothing just or unjust but what is commanded or forbidden by positive laws, is the same as saying that before the describing of a circle all the radii were not equal.

We must therefore acknowledge relations of justice antecedent to the positive law by which they are established: as for instance, that if human societies existed, it would be right to conform to their laws; if there were intelligent beings that had received a benefit of another being, they ought to be grateful; if one intelligent being had created another intelligent being, the latter ought to continue in its original state of dependance; if one intelligent being injures another, it deserves a retaliation of the injury, and so on.

But the intelligent world is far from being so well governed as the physical. For tho' the former has also its laws which of their own nature are invariable, yet it does not conform to them so exactly as the physical world. This is because on the one hand particular intelligent beings are of a finite nature and consequently liable to error; and on the other, their nature requires them to be free agents. Hence they do not steadily conform to their primitive laws; and even those of their own instituting they frequently infringe.

Whether brutes be governed by the general laws of motion, or by a particular movement, is what we cannot determine. Be that as it may, they have not a more intimate relation to God than the rest of the material-world; and sensation is of no other use to them, than in the relation they have either to other particular beings, or to themselves.

By the allurements of pleasure they preserve the being of the individual, and by the same allurements they preserve their species. They have natural laws, because they are united by sensations; positive laws they have none, because they are not connected by knowledge. And yet they do not conform invariably to their natural laws; these are better observed by vegetables, that have neither intellectual nor sensitive faculties.

Brutes are deprived of the high advantages which we have; but they have some which we have not. They have not our hopes, but they are without our fears; they are subject like us to death, but without knowing it; even most of them are more attentive than we to self-preservation, and do not make so bad a use of their passions.

Man, as a physical being, is, like other bodies, governed by invariable laws. As an intelligent being, he incessantly transgresses the laws established by God, and changes those which he himself has established. He is left to his own direction, tho' he is a limited being, subject like all finite intelligences, to ignorance and error; even the imperfect knowledge he has, he loses as a sensible creature, and is hurried away by a thousand impetuous passions. Such a being might every instant forget his Creator; God has therefore reminded him of his duty by the laws of religion. Such a being is liable every moment to forget himself; philosophy has provided against this by the laws of morality. Formed to live in society, he might forget his fellow creatures; legislators have therefore by political and civil laws confined him to his duty.

OF LAWS.

CHAP. II.

Of the Laws of Nature,

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BOOK
I.
Chap. 1.

ANtecedent to all these laws are those of nature, so called because they derive their force entirely from our frame and being. In order to have a perfect knowledge of these laws, we must consider man before the establishment of society: the laws received in such a state would be those of nature.

The law which by imprinting on our minds the idea of a Creator inclines us to him, is the first in importance, tho' not in order, of natural laws. Man in a state of nature would have the faculty of knowing, before he had any acquired knowledge. Plain it is that his first ideas would not be of a speculative nature; he would think of the preservation of his being, before he would investigate its original. Such a man would feel nothing in himself at first but impotency and weakness; his fears and apprehensions would be excessive; as appears from instances (were there any necessity of proving it) of savages found in forests *, trembling at the motion of a leaf, and flying from every shadow.

In this state every man, instead of being sensible of his equality, would fancy himself inferior. There would therefore be no danger of their attacking one another; peace would be the first law of nature.

The natural impulse or desire which Hobbes attributes to mankind of subduing one another, is far

* *Witness the savage found in the forests of Hanover, who was carried over to England under the reign of George I.*

BOOK
I.
Chap. 1.

from being well founded. The idea of empire and dominion is so complex, and depends on so many other notions, that it could never be the first that would occur to human understandings.

Hobbes enquires, *For what reason do men go armed, and have locks and keys to fasten their doors, if they be not naturally in a state of war?* But is it not obvious that he attributes to man before the establishment of society, what can happen but in consequence of this establishment, which furnishes them with motives for hostile attacks and self-defence?

Next to a sense of his weakness man would soon find that of his wants. Hence another law of nature would prompt him to seek for nourishment.

Fear, I have observed, would incline men to shun one another; but the marks of this fear being reciprocal, would soon induce them to associate. Besides, this association would quickly follow from the very pleasure one animal feels at the approach of another of the same species. Again, the attraction arising from the difference of sexes would enhance this pleasure, and the natural inclination they have for each other, would form a third law.

Beside the sense or instinct which man has in common with brutes, he has the advantage of attaining to acquired knowledge; and thereby has a second tie which brutes have not. Mankind have therefore a new motive of uniting; and a fourth law of nature arises from the desire of living in society.

OF LAWS.

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C H A P. III.

Of positive Laws.

AS soon as mankind enter into a state of society, they lose the sense of their weakness; the equality ceases, and then commences the state of war. /

Book

I.

Chap. 3.

Each particular society begins to feel its strength, whence arises a state of war betwixt different nations. The individuals likewise of each society become sensible of their strength; hence the principal advantages of this society they endeavour to convert to their own emolument, which constitutes between them a state of war.

These two different kinds of military states give rise to human laws. Considered as inhabitants of so great a planet which necessarily implies a variety of nations, they have laws relative to their mutual intercourse, which is what we call the *law of nations*. Considered as members of a society that must be properly supported, they have laws relative to the governors and the governed; and this we call *politic law*. They have also another sort of laws relating to the mutual communication of citizens; by which is understood the *civil law*.

The law of nations is naturally founded on this principle, that different nations ought in time of peace to do one another all the good they can, and in time of war as little harm as possible, without prejudicing their real interests.

The object of war is victory; victory aims at conquest; conquest at preservation. From this and the preceding principle all those rules are derived which constitute the *law of nations*.

All countries have a law of nations, not excepting the Iroquois themselves, though they devour their prisoners: for they send and receive ambassadors, and understand the rights of war and peace. The mischief is that their law of nations is not founded on true principles.

Besides the law of nations relating to all societies, there is a *politic law* for each particularly considered. No society can subsist without a form of government. *The conjunction of the particular forces of individuals, as Gravina well observes, constitutes what we call a political state.*

The general force may be in the hands of a single person, or of many. Some think that nature having established paternal authority, the government of a single person was most conformable to nature. But the example of paternal authority proves nothing. For if the power of a father is relative to a single government, that of brothers after the death of a father, or that of cousin-germans after the decease of brothers, are relative to a government of many. The political power necessarily comprehends the union of several families.

Better is it to say that the government most conformable to nature, is that whose particular disposition best agrees with the humour and disposition of the people in whose favour it is established.

The particular force of individuals cannot be united without a conjunction of all their wills. *The conjunction of those wills, as Gravina again very justly observes, is what we call the CIVIL STATE.*

Law in general is human reason, inasmuch as it governs all the inhabitants of the earth; the political and civil laws of each nation ought to be only the particular

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III.
Chap. 3.

particular cases in which this human reason is applied.

They should be adapted in such a manner to the people for whom they are made, as to render it very unlikely for those of one nation to be proper for another.

They should be relative to the nature and principle of the actual, or intended government ; whether they form it, as in the case of political laws, or whether they support it, as may be said of civil institutions.

They should be relative to the climate of each country, to the quality of the soil, to its situation and extent, to the manner of living of the natives, whether husbandmen, huntsmen, or shepherds : they should have a relation to the degree of liberty which the constitution will bear ; to the religion of the inhabitants, to their inclinations, riches, number, commerce, manners, and customs. In fine they have relations amongst themselves, as also to their origin, to the intent of the legislator, and to the order of things on which they are established ; in all which different lights they ought to be considered.

This is what I have undertaken to perform in the following work. These relations I shall examine, since all these together form what I call the *Spirit of laws*.

I have not separated the political from the civil laws ; for as I do not pretend to treat of laws, but of their spirit, and as this spirit consists in the various relations which the laws may have to different things, 'tis not so much my business to follow the natural order of laws, as that of these relations and things.

I shall first examine the relation which laws have to the nature and principle of each government ; and as this principle has a strong influence on laws, I shall make it my business to understand it thoroughly ; and if I can but once establish it, the laws will soon appear to flow from thence as from their source. I shall proceed afterwards to other more particular relations.



B O O K II.

Of Laws directly derived from the Nature of Government.

C H A P. I.

Of the Nature of the three different Governments.

THERE are three species of government; Book II. Chap. 1. & 2. republican, monarchical, and despotic. In order to discover their nature, 'tis sufficient to recollect the common notion, which supposes three definitions or rather three facts: that a republican government is that in which the body, or only a part of the people, is possessed of the supreme power: Monarchy, that in which a single person governs by fixt and established laws: a despotic government, that in which a single person directs every thing by his own will and caprice.

This is what I call the nature of each government; we must examine now which are those laws that follow this nature directly, and consequently are the first fundamental laws.

C H A P. II.

Of the republican Government, and the Laws relative to Democracy.

WHEN the body of the people in a republic are possessed of the supreme power, this is called a democracy. When the supreme power is

*See the
Journal
of the
A. 243*

Book II. is lodged in the hands of a part of the people, 'tis
 Chap. 2. then an *aristocracy*.

In a democracy the people are in some respects the sovereign, and in others the subject.

There can be no exercise of sovereignty but by their suffrages, which are their own will; now the sovereign's will is the sovereign himself. The laws therefore which establish the right of suffrage, are fundamental to this government. In fact, 'tis as important to regulate in a republic, in what manner, by whom, to whom, and concerning what, suffrages are to be given, as it is in a monarchy to know who is the prince and after what manner he ought to govern.

(*) De. Libanius ^(a) says, that at *Athens a stranger who intermeddled in the assemblies of the people, was punished with death*. This is because such a man usurped the rights of sovereignty.

'Tis an essential point to fix the number of citizens who are to form the public assemblies; otherwise it might be uncertain whether they had the votes of the whole, or of only a part of the people. At Sparta the number was fixt to ten thousand. But at Rome, a city design'd by providence to rise from the weakest beginnings to the highest pitch of grandeur; at Rome, a city doomed to experience all the vicissitudes of fortune; at Rome, who had sometimes all her inhabitants without her walls, and sometimes all Italy and a considerable part of the world within them: at Rome, I say, this number was never fixed (b), and this was one of the principal causes of her ruin.

(b) See the considerations on the causes of the grandeur and decline of the Romans.

The people in whom the supreme power resides, ought to do of themselves whatever conveniently they can; and what they themselves cannot rightly perform, they must do by their ministers.

The

The ministers are not properly their's unless they have the nomination of them: 'tis therefore a fundamental maxim in this government, that the people should chuse their ministers, that is, their magistrates.

They have occasion as well as monarchs, and even more so, to be directed by a council or senate. But to have a proper confidence in these, they should have the chusing of the members; and this whether the election be made by themselves, as at Athens; or by some magistrate deputed for that purpose, as on certain occasions was customary at Rome.

The people are extremely well qualified for chusing those, whom they are to intrust with part of their authority. They have only to be determined by things which they cannot be strangers to, and by facts that are obvious to sense. They can tell when a person has been in several engagements, and has had particular success; they are therefore very capable of electing a general. They can tell when a judge is assiduous in his office, when he gives general satisfaction, and has never been charged with bribery: this is sufficient for chusing a prætor. They are struck with the magnificence or riches of a fellow citizen; this is as much as is requisite for electing an edile. These are all facts of which they can have better information in a public forum, than a monarch in his palace. But are they able to manage an intricate affair, to find out and make a proper use of places, occasions, moments? No, this is beyond their capacity.

Should we doubt of the people's natural ability in respect to the discernment of merit, we need only

Book
II.
Chap. 2.

ly cast an eye on the continual series of surprizing elections made by the Athenians and Romans ; which no one surely will attribute to hazard.

We know that tho' the people of Rome assumed to themselves the right of raising plebeians to public offices, yet they could not resolve to chuse them ; and tho' at Athens the magistrates were allowed by the law of Aristides, to be elected from all the different classes of inhabitants, yet there never was a case, says Xenophon^(d), that the common people petitioned for employments that could endanger their security or glory.

(d) Page
691, and
692. Edit.
Wechel.

Ann.

1576.

As most citizens have a capacity of chusing, tho' they are not sufficiently qualified to be chosen ; so the people, tho' capable of calling others to an account for their administration, are incapable of the administration themselves.

The public business must be carried on, with a certain motion neither too quick nor too slow. But the motion of the people is always either too remiss or too violent. Sometimes with a hundred thousand arms they overturn all before them ; and sometimes with a hundred thousand feet they creep like insects.

In a popular state the inhabitants are divided into certain classes. 'Tis in the manner of making this division that great legislators have signalized themselves ; and 'tis on this the duration and prosperity of democracy have always depended.

Servius Tullius followed the spirit of aristocracy in the distribution of his classes. We find in Livy^(e) and in Dionysius Halicarnassensis^(f), in what manner he lodged the right of suffrage in the hands of the principal citizens. He had divided the

(e) lib. 1.
(f) lib.
4, Art.
15, & seq.

the people of Rome into a hundred and ninety three centuries, which formed six classes; and ranking the rich, who were in smaller numbers, in the first centuries; and those in middling circumstances, who were more numerous, in the following centuries; he flung the indigent multitude into the last; and as each century had but one vote, * 'twas property rather than numbers that decided the elections.

Solon divided the people of Athens into four classes. In this he was directed by the spirit of democracy, his intention not being to fix those who were to chuse, but those who were capable of being chosen; wherefore leaving to each citizen the right of election, he made ^(g) the judges eligible from each of those four classes; but the magistrates he ordered to be chosen only out of the three first, which consisted of citizens of easy fortunes.

As the division of those who have a right of suffrage, is a fundamental law in a republic; so the manner also of giving this suffrage is another fundamental law.

The suffrage by *lot* is natural to democracy; as that by *choice* is to aristocracy.

The suffrage by *lot* is a method of electing that offends no one; it lets each citizen entertain reasonable hopes of serving his country.

But as this method is in itself defective, it has been the glorious endeavour of the most eminent legislators to regulate and amend it.

* See in the Considerations on the causes of the grandeur and decline of the Romans, chap. 9. how this spirit of Servius Tullius was preserved in the republic.

(g) Dionysius Halicarn. elogium of Isocrates, p. 97, tom. 2. Edit. Wechel. Pollux lib. 8. cap. 10. Art. 130.

Book
II.
Chap. 2.

Solon made a law at Athens that military employments should be conferred by choice, but that senators and judges should be elected by *lot*.

The same legislator ordained, that civil magistracies, attended with great expence, should be given by choice ; and the others by *lot*.

But in order to amend the suffrage by *lot*, he made a rule that none but those who presented themselves should be elected ; that the person elected should be examined by judges ^(b), and that every one should have a right to accuse him if he were unworthy of the office * : this participated at the same time of the suffrage by *lot*, and of that by choice. When the time of their magistracy was expired, they were obliged to submit to another judgment upon the manner they had behaved. Persons utterly unqualified, must have been extremely backward in giving in their names to be drawn by *lot*.

(b) See the oration of Demosthenes *de falsa legat.* and the oration against Timarchus.

(i) lib. 1, & 3. de Leg.

The law which determines the manner of giving the suffrages, is likewise fundamental in a democracy: 'Tis a question of some importance, whether the suffrages ought to be public or secret. Cicero observes ⁽ⁱ⁾, that the laws § which rendered them secret towards the close of the republic, were the cause of its decline. But as this is differently practised in different republics, I shall offer here my thoughts concerning this subject.

* They used even to draw two tickets for each place, one which gave the place, and the other which named the person who was to succeed, in case the first was rejected.

§ They were called *Leges Tabulares* ; two tablets were presented to each citizen, the first marked with an *A*, for *Antiquo*, or *I forbid it* ; and the other with an *U* and an *R*, for *Uti Rogas*, or *Be it as you desire*

The people's suffrages ought doubtless to be public †; and this should be considered as a fundamental law of democracy. The lower sort of people ought to be directed by those of higher rank, and restrained within bounds by the gravity of certain personages. Hence by rendering the suffrages secret in the Roman republic all was lost; it was no longer possible to direct a populace that sought its own destruction. But when the body of the nobles are to vote in an aristocracy §; or in a democracy, the senate ||; as the business is then only to prevent intrigues, the suffrages cannot be too secret.

Intriguing in a senate is dangerous; dangerous it is also in a body of nobles; but not so in the people whose nature it is to act thro' passion. In countries where they have no share in the government, we often see them as much inflamed on the account of an actor, as ever they could be for any concern of the state. The misfortune of a republic is, when there are no more intrigues; and this happens when the people are corrupted by dint of money: in which case they grow indifferent to public concerns, and passionately desirous of lucre. Careless of the government, and of every thing belonging to it, they quietly wait for their salary.

'Tis likewise a fundamental law in democracies, that the people should have the sole power to enact laws. And yet there are a thousand occasions on which 'tis necessary the senate should have a power

† At Athens the people used to lift up their hands.

§ As at Venice.

|| The thirty tyrants at Athens ordered the suffrages of the *Areopagites* to be public, in order to manage them as they pleased.
Lyfias orat. contra Agorat. cap. 8.

BOOK
II.
Chap. 3.

(^h) See
Dionys.
Halicarn.
lib. 4, & 9.

of decreeing; nay it is frequently proper to make some trial of a law before it is established. The constitutions of Rome and Athens were excellent. The decrees of the senate (^h) had the force of laws for the space of a year, and did not become perpetual till they were ratified by the consent of the people.

CHAP. III.

Of the Laws relative to the nature of Aristocracy.

IN an aristocracy the supreme power is lodged in the hands of a certain number of persons. These are invested both with the legislative and executive authority; and the rest of the people are in respect to them, the same as the subjects of a monarchy in regard to the monarch.

They do not vote here by lot, for this would be attended only with inconveniences. In fact, in a government where the most oppressive distinctions are already established, tho' they were to vote by lot, still they would not cease to be odious; 'tis the nobleman they envy and not the magistrate.

When the nobility are numerous, there must be a senate to regulate the affairs which the body of nobles are incapable of deciding, and to prepare those they decide. In this case it may be said that the aristocracy is in some measure in the senate, the democracy in the body of the nobles, and the people are nothing at all.

It would be a very happy thing in an aristocracy, if by some indirect method the people could be emancipated from their state of annihilation. Thus at Genoa the bank of St. George being

being administered by the people, gives them a certain influence in the government, from whence their whole prosperity arises.

BOOK II.
Chap. 3.

The senators ought by no means to have a right of naming their own members ; for this would be the only way to perpetuate abuses. At Rome, which in its early years was a kind of aristocracy, the senate did not fill up the vacant places in their own body, the new senators were nominated by the § censors.

An exorbitant authority suddenly conferred upon a citizen in a republic, produces a monarchy ; or something more than a monarchy. In the latter the laws have provided for, or in some measure adapted themselves to, the constitution ; and the principle of government checks the monarch : but in a republic where a private citizen has obtain'd an exorbitant power ||, the abuse of this power is much greater, because the laws foresaw it not, and consequently made no provision against it.

There is an exception to this rule when the constitution is such as to have immediate need of a magistrate invested with an exorbitant power. Such was Rome with her dictators, such is Venice with her state inquisitors ; these are formidable magistrates, who restore, as it were by violence, the state to its liberty. But how comes it that these magistracies are so very different in these two republics ? 'Tis because Rome supported the remains of her aristocracy against the people ; whereas Venice employs her state inquisitors to maintain her aristocra-

§ They were named at first by the consuls.

|| This is what ruined the republic of Rome : See Considerations on the causes of the grandeur and decline of the Romans.

cy against the nobles. The consequence was, that at Rome the dictatorship could be only of a short duration, because the people act thro' passion and violence, and not with design. It was necessary that a magistracy of this kind should be exercised with lustre and pomp, because the business was to intimidate and not to punish the people. It was also necessary that the dictator should be created only for some particular affair, and for this only should have an unlimited authority, because he was always created upon some sudden emergency. On the contrary, at Venice they have occasion for a permanent magistracy; for here it is that designs may be commenced, continued, suspended, resumed; that the ambition of a single person becomes that of a family, and the ambition of one family that of many. They have occasion for a secret magistracy, because the crimes they punish, are hatched in secrecy and silence. This magistracy must have a general inquisition, by reason their business is not to put a stop to known evils, but to prevent the unknown. In fine the latter magistracy is appointed in order to punish suspected crimes; and the former used rather menaces than punishment even for crimes that were openly avowed by their authors.

In all magistracies, the greatness of the power must be compensated by the brevity of the duration. This most legislators have fixed to a year; a longer space would be dangerous, and a shorter would be contrary to the nature of the thing. For who is it that in the management even of his domestic affairs would be thus confined? At Ragusa * the chief magistrate of the republic is changed every month, the

* Tournesfort's voyages.

other officers every week, and the governor of the castle every day. But this can take place only in a small republic environed † by formidable powers, who might easily corrupt such petty and insignificant magistrates.

The best aristocracy is that in which those who have no share in the legislature, are so few and inconsiderable, that the governing party have no interest in oppressing them. Thus when Antipater^(b) made a law at Athens, that whosoever was not worth two thousand drachms, should have no power to vote, he formed by this means the best aristocracy possible; because this was so small a sum as excluded very few, and not one of any rank or consideration in the city. Aristocratical families ought therefore, as much as possible, to level themselves in appearance with the people. The more an aristocracy borders on democracy, the nearer it approaches to perfection; and the more it is imperfect, in proportion as it draws towards monarchy.

(b) Diodorus lib. 18. p. 601. Rhodoman's Edition.

But the most imperfect of all, is that in which the part of the people that obeys, is in a state of civil servitude to those who command, as the aristocracy of Poland, where the peasants are slaves to the nobility.

C H A P. IV.

Of the Relation of Laws to the Nature of monarchical Government.

THE intermediate, subordinate and dependent powers, constitute the nature of mo-

† At Lucca the magistrates are chosen only for two months.

archical government, I mean of that in which a single person governs by fundamental laws. I said, the *intermediate, subordinate and dependent powers*. In fact, in monarchies the prince is the source of all power political and civil. These fundamental laws necessarily suppose the intermediate channels through which the power flows: for if there be only the momentary and capricious will of a single person to govern the state, nothing can be fixed, and of course there can be no fundamental law.

The most natural, intermediate and subordinate power is that of the nobility. This in some measure seems to be essential to a monarchy, whose fundamental maxim is, *no monarch, no nobility; no nobility, no monarch*; but there may be a despotic prince.

There are men who have endeavoured in some countries in Europe to abolish all the jurisdiction of the nobility; not perceiving that they were driving at the very thing that was done by the parliament of *England*. Abolish the privileges of the lords, of the clergy, and of the cities in a monarchy; and you will soon have a popular state, or else a despotic government.

The courts of a considerable kingdom in Europe have, for many ages, been striking at the patrimonial jurisdiction of the lords and clergy. We do not pretend to censure these sage magistrates; but we leave it to the public to judge, how far this may alter the constitution.

Far am I from being prejudiced in favour of the privileges of the clergy; however, I should be glad their jurisdiction were once fixed. The

question is not whether their jurisdiction was justly established ; but whether it be really established ; whether it constitutes a part of the laws of the country, and is in every respect relative to those laws ; whether between two powers acknowledged independent, the conditions ought not to be reciprocal ; and whether it is not equally the duty of a good subject to defend the prerogative of the prince, as to maintain the limits which from time immemorial he has prescribed to his authority.

Though the ecclesiastic power is so dangerous in a republic, yet it is extremely proper in a monarchy, especially of the absolute kind. What would become of *Spain* and *Portugal* since the subversion of their laws, were it not for this only barrier against the incursions of arbitrary power ? A barrier that is always useful when there is no other : for as a despotic government is productive of the most frightful calamities to human nature, the very evil that restrains it, is beneficial to the subject.

As the ocean which seems to threaten to overflow the whole earth, is stopped by weeds and by little pebbles that lie scattered along the shore : so monarchs whose power seems unbounded, are restrained by the smallest obstacles, and suffer their natural pride to be subdued by supplication and prayer.

The English to favour their liberty, have abolished all the intermediate powers of which their monarchy was composed. They have a great deal of reason to be jealous of this liberty ; were they ever to be so unhappy as to lose it, they would be one of the most servile nations upon earth.

THE SPIRIT

Mr. Law, through ignorance both of a republican and monarchical constitution, was one of the greatest promoters of absolute power that ever was known in Europe. Besides the violent and extraordinary changes owing to his direction; he wanted to suppress all the intermediate ranks, and to abolish the political communities. He was dissolving * the monarchy by his chimerical reimbursements, and seemed as if he wanted to redeem even the very constitution.

It is not enough to have intermediate powers in a monarchy; there must be also a depositary of the laws. This depositary can be only the judges of the supreme courts of justice, who promulge the new laws, and revive the obsolete. The natural ignorance of the nobility, their indolence, and contempt of civil government, require there should be a body invested with a power of reviving and executing the laws which would be otherwise buried in oblivion. The prince's council are not a proper depositary. They are naturally the depositary of the momentary will of the prince, and not of the fundamental laws. Besides the prince's council is continually changing; it is neither permanent, nor numerous; neither has it a sufficient share of the confidence of the people; consequently it is incapable to set them right in difficult conjunctures, or to reduce them to proper obedience.

Despotic governments, where there are no fundamental laws, have no such kind of depositary. Hence it is that religion has generally so much influence in those countries, because it forms

* Ferdinand king of Arragon made himself grand master of the orders, and that alone changed the constitution.

a kind of permanent depositary; and if this cannot be said of religion, it may of the customs that are respected instead of laws.

Book
II.
Chap. 5.

C H A P. V.

Of the Laws relative to the Nature of a despotic Government.

FROM the nature of despotic power it follows that the single person invested with this power, commits the execution of it also to a single person. A man whom his senses continually inform, that he himself is every thing, and his subjects nothing, is naturally lazy, voluptuous, and ignorant. In consequence of this, he neglects the management of public affairs. But were he to commit the administration to many, there would be continual disputes among them; each would form intrigues to be his first slave; and he would be obliged to take the reins into his own hands. It is therefore more natural for him to resign it to a vizir *, and to invest him with the same power as himself. The creation of a vizir is a fundamental law of this government.

It is related of a pope, that he had raised an infinite number of difficulties against his election, from a thorough conviction of his incapacity. At length he was prevailed on to accept of the pontificate; and resigned the administration intirely to his nephew. He was soon struck with surprize, and said, *I should never have thought that these things were so easy.* The same may be said of the

* The Eastern kings are never without vizirs, says Sir John Chardin.

BOOK
II.
Chap. 5.

princes of the East, who, being bred in that prison where their eunuchs enervate both their hearts and understandings, and where they are frequently kept ignorant even of their high rank, when drawn forth in order to be placed on the throne, they are at first amazed: but as soon as they have chosen a vizir, they abandon themselves in their seraglio to the most brutal passions, pursuing in the midst of a prostituted court, the most capricious extravagancies; they then could never have dreamt to find matters so easy.

The greater the extent of an empire, the greater is the seraglio; and consequently so much the more is the prince intoxicated with pleasure. Hence the more nations such a prince has to govern, the less he attends to the government; the greater his affairs, the less he makes them the subject of his deliberations.



BOOK III.

Of the Principles of the three kinds of Government.

CHAP. I.

Difference between the Nature and Principle of Government.

AFTER having examined the laws relative to the nature of each government, we must investigate those that relate to its principle. BOOK
III.
Ch. 1. & 2.

There is this difference * between the nature and principle of government; its nature is that by which it is constituted, and its principle that by which it is made to act. One is its particular structure, and the other the human passions which set it in motion.

Now laws ought to be no less relative to the principle than to the nature of each government. We must therefore inquire into this principle, which shall be the subject of this third book.

CHAP. II.

Of the Principle of different Governments.

I HAVE already observed that it is the nature of a republican government, that either the collective body of the people, or particular families

* This is a very important distinction, from whence I shall draw a great many consequences; for it is the key of an infinite number of laws.

should

should be possessed of the sovereign power: of a monarchy, that the prince should have this sovereign power, but in the execution of it should be directed by established laws: of a despotic government, that a single person should rule according to his own will and caprice. No more do I want to enable me to discover their three principles; these are from thence most naturally derived. I shall begin with a republican government, and in particular with that of democracy.

C H A P. III.

Of the Principle of Democracy.

THERE is no great share of probity necessary to support a monarchical or despotic government. The force of laws in one, and the prince's arm in the other, are sufficient to direct and maintain the whole. But in a popular state, one spring more is necessary, namely *virtue*.

What I have here advanced, is confirmed by the unanimous testimony of historians, and is extremely agreeable to the nature of things. For it is clear that in a monarchy, where he who commands the execution of the laws generally thinks himself above them, there is less need of virtue than in a popular government, where the person intrusted with the execution of the laws, is sensible of his being subject himself to their direction.

Clear it is also that a monarch, who through bad advice or indolence ceases to enforce the execution of the laws, may easily repair the evil: he has only to follow other advice; or to shake off this indolence. But when in a popular government,

ment, there is a suspension of the laws, as this can proceed only from the corruption of the republic, the state is certainly undone. BOOK
III.
Chap. 3.

A very droll spectacle it was in the last century to behold the impotent efforts the English made for the establishment of democracy. As those who had a share in the direction of public affairs were void of all virtue, as their ambition was inflam'd by the success of the most daring of their members *, as the spirit of a faction was suppressed only by that of a succeeding faction, the government was continually changing: the people amazed at so many revolutions, fought every where for a democracy without being able to find it. At length after a series of tumultuary motions and violent shocks, they were obliged to have recourse to the very government which they had so odiously proscribed.

When Sylla wanted to restore *Rome* to her liberty, this unhappy city was incapable of receiving it. She had only some feeble remains of virtue, and as this was every day diminishing, instead of being roused out of her lethargy, by Cæsar, Tiberius, Caius, Claudius, Nero, Domitian, she riveted every day her chains; the blows she struck, were levelled against the tyrants, but not at the tyranny.

The politic Greeks who lived under a popular government, knew no other support but virtue. The modern inhabitants of that country are intirely taken up with manufactures, commerce, finances, riches and luxury.

* Cromwell,

THE SPIRIT

When virtue is banished, ambition invades the hearts of those who are disposed to receive it, and avarice possesses the whole community. The desires now change their objects; what they were fond of before, becomes indifferent; they were free, while under the restraint of laws, they will now be free to act against law; and as every citizen is like a slave escaped from his master's house, what was a maxim of equity, they call rigour; what was a rule of action, they call constraint; and to precaution they give the name of fear. Frugality, and not the thirst of gain, now passes for avarice. Formerly the wealth of individuals constituted the public treasure; but now the public treasure is become the patrimony of private persons. The members of the commonwealth riot on the public spoils, and its strength is only the power of some citizens, and the licentiousness of the whole community.

(*) Plutarch in Pericle,
Plato in Critia.

Athens was possessed of the same number of forces, when she triumphed with so much glory, and when with so much infamy she was enslaved. She had twenty thousand citizens (*), when she defended the Greeks against the Persians, when she contended for empire with Sparta, and invaded Sicily. She had twenty thousand when Demetrius Phalereus numbered them *, as slaves are told by the head in a market. When Philip attempted to reign in Greece, and appeared at the gates of Athens †, she had even then lost nothing but time. We may see in Demosthenes how difficult it was to awake her: she

* She had at that time twenty one thousand citizens, ten thousand strangers, and four hundred thousand slaves. See Athenæus, Book 6.

† She had then twenty thousand citizens. See Demosthenes in Aristog.

dreaded

dreaded Philip not as the enemy of her liberty, but of her pleasures*. This famous city, which had withstood so many defeats, and after having been so often destroyed, had as often risen out of her ashes, was overthrown at Chæroneæ, and at one blow deprived of all hopes of resource. What does it avail her that Philip sends back her prisoners, if he does not return her men? It was ever after as easy to triumph over the Athenian forces, as it would have been difficult to triumph over her virtue.

How was it possible for Carthage to maintain her ground? When Hannibal, upon his being made prætor, endeavoured to hinder the magistrates from plundering the republic, did not they complain of him to the Romans? Wretches, who wanted to be citizens without a city, and to be beholden for their riches, to their very destroyers! Rome soon insisted upon having three hundred of their principal citizens as hostages; she obliged them next to surrender their arms and ships; and then she declared war against them†. By the efforts made by this defenceless city, when reduced to despair, one may judge of what she might have done in her full strength, and assisted by virtue.

CH A P. IV.

Of the Principle of Aristocracy.

AS virtue is necessary in a popular government, so it is necessary also under an

* They had passed a law which rendered it a capital crime for any one to propose applying the money designed for the theatres to the military service.

† This war lasted three years.

aristocracy.

aristocracy. True it is that in the latter it is not so absolutely requisite.

The people, who in respect to the nobility are the same as the subjects with regard to the monarch, are restrained by their laws. They have therefore less occasion for virtue than the people in a democracy. But how are the nobility to be restrained? Those who are to execute the laws against their colleagues, will immediately perceive they are acting against themselves. Virtue is therefore necessary in this body by the very nature of the constitution.

An aristocratical government has within itself a certain strength which a democracy has not. The nobles form a body, who by their prerogative and through particular interest, restrain the people; it is sufficient here that there are laws in being to see them executed.

But as easy as it is for the body of the nobles to contain the people within bounds, so difficult is it to contain themselves *. Such is the nature of this constitution, that it seems to subject the very same persons to the power of the laws, and at the same time to exempt them.

Now such a body as this can restrain itself only two ways; either by a very eminent virtue, which puts the nobility in some measure on a level with the people, and may be the means of forming a great republic; or by an inferior virtue, which puts them at least upon a level with one another, and on this their preservation depends.

* Public crimes may be punished, because it is here a common concern; but private crimes will go unpunished, because it is a common interest not to punish them.

Moderation is therefore the very soul of this government; a moderation I mean founded on virtue, not that which proceeds from indolence and pusillanimity.

CHAP. V.

That Virtue is not the Principle of a monarchical Government.

IN monarchies, policy makes people do great things with as little virtue as she can. Thus in the finest machines, art has contrived as few movements, springs, and wheels as possible.

The state subsists independently of the love of our country, of the thirst of true glory, of self-denial, of the sacrifice of our dearest interests, and of all those heroic virtues which we admire in the ancients, and which to us are known only by story.

The laws supply here the place of those virtues; they are by no means wanted, and the state dispenses with them: an action performed here in secret is in some measure of no consequence.

Though all crimes be in their own nature public, yet there is a distinction between crimes that are really public, and those that are private, which are so called, because they are more injurious to individuals than to the whole society.

Now in republics private crimes are more public, that is, they attack the constitution more than they do individuals; and in monarchies public crimes are more private, that is, they are more prejudicial to private people than to the constitution.

THE SPIRIT

I beg that no one will take this amiss ; my observations are founded on the unanimous testimony of historians. I am not ignorant that virtuous princes are no such very rare sight ; but I venture to affirm that in a monarchy it is extremely difficult for the people to be virtuous *.

Let us compare what the historians of all ages have said concerning the courts of monarchs ; let us recollect the conversations and sentiments of people of all countries in respect to the wretched character of courtiers ; and we shall find, that these are not mere airy speculations, but things confirmed by a sad and melancholy experience.

Ambition joined to idleness, and baseness to pride ; a desire of obtaining riches without labour, and an aversion to truth ; flattery, treason, perfidy, violation of engagements, contempt of civil duties, fear of the prince's virtue, hope from his weakness, but above all a perpetual ridicule cast upon virtue, are, I think, the characteristics by which most courtiers in all ages and countries have been constantly distinguished. Now it is exceeding difficult for the leading men of the nation to be knaves, and for the inferior sort of people to be honest ; for the former to be cheats, and for the latter to rest satisfied to be only dupes.

But if there should chance to be some unlucky honest man † among the people, Cardinal Richelieu

* I speak here of political virtue, which is also moral virtue as it is directed to the public good ; very little of private moral virtue ; and not at all of that virtue which relates to revealed truths. This will appear better, Book V. chap. 2.

† This is to be understood in the sense of the preceding note.

in his political testament * seems to hint that a prince should take care not to employ him †. So true is it that virtue is not the spring of this government !

Book
III.
Ch. 6. & 7.

C H A P. VI.

In what manner Virtue is supplied in a monarchical Government.

BUT it is high time for me to have done with this subject, lest I should be suspected of writing a satire against monarchical government. Far be it from me ; if monarchy wants one spring, it is provided with another. Honor, that is, the prejudice of every person and rank, supplieth the place of virtue, and is every where her representative : here it is capable of inspiring the most glorious actions, and joined with the force of laws may lead us to the end of government as well as virtue itself.

Hence in well regulated monarchies, they are almost all good subjects, and very few good men ; for to be a good man, a good intention is necessary (*).

(a) See the
note p. 34.

C H A P. VII.

Of the Principle of Monarchy.

A Monarchical government supposeth, as we have already observed, preeminences, and ranks,

* This book was written under the inspection, and from the memoirs of cardinal Richelieu by Messieurs de Bourseis, and de—, who were strongly his adherents.

† We must not, says he, employ people of mean extraction ; they are too austere and difficult.

and likewise a noble descent. Now as it is the nature of honor to aspire to preferments and distinguishing titles ; it is therefore properly placed in this government.

Ambition is pernicious in a republic. But in a monarchy it has some good effects ; it gives life to the government, and is attended with this advantage, that it is no way dangerous, because it may be continually checked.

It is with this kind of government as with the system of the universe, in which there is a power that constantly repels all bodies from the center, and a power of gravitation that attracts them to it. Honor sets all the parts of the body politic in motion ; by its very action it connects them ; and thus each individual advances the public good, while he only thinks of promoting his own particular interest.

True it is, that, philosophically speaking, it is a false honor which moves all the parts of the government ; but even this false honor is as useful to the public, as true honor could possibly prove to private people.

Is it not a very great point, to oblige men to perform the most difficult actions, such as require a great degree of fortitude and spirit, without any other recompence, than the fame and reputation arising from the actions themselves ?

CHAP. VIII.

That Honor is not the Principle of despotic Government.

HONOR is far from being the principle of despotic government : men being here all upon

upon a level, no one can prefer himself to another; men being here all slaves, they can give themselves no preference at all. B o o k
III.
Chap. 9.

Besides, as honor has its laws and rules, as it knows not how to submit, as it depends in a great measure on a man's own caprice, and not on that of another person; it can be found only in countries in which the constitution is fixed, and where they are governed by settled laws.

How can a despotic prince bear with any such thing as honor? Honor glories in contempt of life, and here the prince's whole strength consists in the power of taking it away. How can honor ever bear with a despotic prince? It has its fixed rules, and constant caprices; but a despotic prince is directed by no rule, and his own caprices destroy all others.

Honor therefore, a thing unknown in despotic governments, where very often they have not so much as a fit word to express it ^(d), is the prevailing principle in monarchies; here it gives life to the whole body politic, to the laws, and even to the virtues themselves. (d) See Perry, P. 447.

C H A P. IX.

Of the Principle of despotic Government.

AS virtue is necessary in a republic, and in a monarchy honor, so fear is necessary in a despotic government: with regard to virtue, there is no occasion for it, and honor would be extremely dangerous.

Here the immense power of the prince is devolved intirely upon those to whom he is pleased to intrust

Book
III
Chap. 9.

it. Persons capable of setting a value upon themselves would be likely to create revolutions. Fear must therefore depress their spirits, and extinguish even the least sense of ambition.

A moderate government may, whenever it pleases, and without any danger, relax its springs. It supports itself by its laws, and by its own force. But when a despotic prince ceases one single moment to lift up his arm, when he cannot instantly demolish those whom he has entrusted with the first posts and employments *, all is over: for as fear, the spring of this government, no longer subsists, the people are left without a protector.

It is probably in this sense the Cadis maintained that the grand Signor was not obliged to keep his word or oath, when he limited thereby his authority (c).

* Ricault
on the Ot-
toman em-
pire.

It is necessary that the people should be judged by laws, and the great men by the caprice of the prince; that the lives of the lowest subjects should be safe, and the bashaws head always in danger. We cannot mention these monstrous governments without horror. The Sophi of Persia dethroned in our days by Mahomet the son of Miriveis, saw the constitution subverted before this revolution, because he had been too sparing of blood (f).

(f) See the
history of
this revo-
lution by
father Du-
cerceau.

History informs us that the horrid cruelties of Domitian struck such a terror into the governors, that the people recovered themselves a little under his reign †. Thus a torrent lays one side of a whole country waste, and on the other leaves fields

* As it often happens in a military aristocracy.

† His was a military government, which is one of the species of despotic government.

untouched, where the eye is refreshed with the sight of some distant meadows.

Book
III.
Chap. 10.

CHAP. X.

Difference of Obedience in moderate and despotic Governments.

IN despotic states the nature of the government requires the most passive obedience; and when once the prince's will is made known, it ought infallibly to produce its effect.

Here they have no limitations or restrictions, no mediums, terms, equivalents, parleys, or remonstrances; nothing equal or better to propose: man is a creature that submits to the absolute will of a creature like himself.

In a country like this they are no more allowed to represent their fears in respect to a future event, than to excuse their bad success by the capriciousness of fortune. Man's portion here, like that of beasts, is instinct, compliance and punishment.

Little does it then avail to plead the sentiments of nature, respect for a father, tenderness for a wife and children, the laws of honor, or an ill state of health; the orders are given, and that is sufficient.

In Persia when the king has condemned a person, it is no longer lawful to mention his name, or to intercede in his favor. Though he were drunk and beside himself, yet the decree must be executed ⁽⁸⁾; otherwise he would contradict himself, and the law admits of no contradiction. This has been the way of thinking in this country in all ages; as the order which Ahasuerus gave to exterminate the Jews,

(8) See Sir John Chardin.

BOOK could not be revoked, they contrived to allow them
 III. the liberty of defending themselves.
 Chap. 10.

There is one thing however that may be opposed to the prince's will (^h); namely religion. They will abandon a parent, nay they will kill him, if the prince so commands; but he cannot oblige them to drink wine. The laws of religion are of a superior nature, because they bind the prince as well as the subject. But, with respect to the law of nature it is otherwise; the prince is no longer supposed to be a man.

In monarchical and moderate states, the power is limited by its very spring, I mean by honor, which like a monarch reigns over prince and people. They will not here alledge to their prince the laws of religion; a courtier would think this would render him ridiculous. But the laws of honor will be alledged on all occasions. Hence arise the restrictions necessary to obedience; honor is naturally subject to whims, by which the subject's obedience will be always directed.

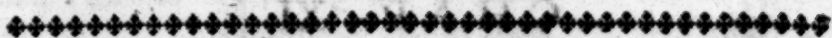
Though the manner of obeying be different in these two kinds of government, yet the power is the same. On which side soever the monarch turns, he inclines the scale, and is obeyed. The whole difference is, that in a monarchy the prince has the assistance of instruction, and his ministers have a far greater capacity and are better versed in affairs than the ministers of a despotic government.

CHAP. XI.

Reflections on the foregoing.

SUCH are the principles of the three sorts of government : which does not imply that in a particular republic they actually are, but that they ought to be, virtuous : nor does it prove, that in a particular monarchy they are actuated by honor, or in a particular despotic government by fear ; but that they ought to be directed by these principles, otherwise the government is imperfect.

BOOK
III.
Chap. II.



BOOK IV.

That the Laws of Education ought to be relative to the principles of Government.

CHAP. I.

Of the Laws of Education.

BOOK
IV.
Chap. 1.
& 2.

THE laws of education are the first impressions we receive ; and as they prepare us for civil life, each particular family ought to be governed pursuant to the plan of the great family which comprehends them all.

If the people in general have a principle, their constituent parts, that is, the several families, will have one also. The laws of education will be therefore different in each species of government ; in monarchies they will have honor for their object ; in republics, virtue ; in despotic governments, fear.

CHAP. II.

Of Education in Monarchies.

IN monarchies the principal branch of education is not taught in colleges or academies. It in some measure commences, when we set out in the world : for this is the school of what we call honor, that universal preceptor which ought every where to be our guide.

Here it is that we constantly see and hear three things, *that we should have a certain nobleness in*
our

our virtues, a kind of frankness in our morals, and a particular politeness in our behaviour.

BOOK
IV.
Chap. 2.

The virtues we are here taught, are less what we owe to others, than to ourselves; they are not so much what assimilates us to, as what distinguishes us from, our fellow citizens.

Here the actions of men are not judged as good, but as shining; not as just, but as great; not as reasonable, but as extraordinary.

When honor here meets with any thing noble in our actions, it is either a judge that approves them, or a sophist by whom they are excused.

It allows of gallantry when united with the idea of sensible affection; or with that of conquest; this is the reason why we never meet with so strict a purity of morals in monarchies as in republican governments.

It allows of cunning and craft, when joined with the idea of greatness of soul or importance of affairs; as for instance, in politics with whose finesses it is far from being offended.

It does not forbid adulation, but when separate from the idea of a large fortune, and connected only with the sense of our mean condition.

With regard to morals, I have observed that the education of monarchies ought to admit of a certain frankness and open carriage. Truth therefore in conversation is here a necessary point. But is it for the sake of truth? by no means. Truth is requisite only because a person habituated to veracity has an air of boldness and freedom. In fact, a man of this stamp seems to lay a stress only on the things themselves, and not on the manner in which they are received.

Hence

THE SPIRIT

Hence it is, that as much as this kind of frankness is commended, so much that of the common people is despised, which has nothing but truth and simplicity for its object.

In fine, the education of monarchies requires a certain politeness of behaviour. Men born for society, are born to please one another; and a person that would break thro' the rules of decorum, by shocking those he conversed with, would so far lose the public esteem as to become incapable of doing any good.

But politeness, generally speaking, does not derive its original from so pure a source. It rises from a desire of distinguishing ourselves. It is pride that renders us polite: we feel a pleasing vanity in being remarked for a behaviour that shews in some measure we are not meanly born, and that we have not been bred up with those who in all ages have been considered as the scum of the people.

Politeness, in monarchies, is naturalised at court. One man excessively great renders every body else little. Hence that regard which is paid to our fellow subjects; hence that politeness, which is as pleasing to those by whom, as to those towards whom, it is practised; because it gives people to understand, that a person actually belongs, or at least deserves to belong, to the court.

A court air consists in quitting a real for a borrowed greatness. The latter pleases the courtier more than his own. It inspires him with a certain disdainful modesty which shews itself externally, but whose pride diminishes insensibly in proportion to its distance from the source of this greatness.

At

At court we find a delicacy of taste in every thing, a delicacy arising from the constant use of the superfluities of an affluent fortune, from the variety, and especially the satiety of pleasures, from the multiplicity and even confusion of fancies, which if they are but agreeable are always well received.

These are the things which properly fall within the province of education, in order to form what we call a man of honor, a man possessed of all the qualities and virtues requisite in this kind of government.

Here it is that honor interferes with every thing, mixing even with people's manner of thinking, and directing their very principles.

To this whimsical honor it is owing that the virtues are only just what it pleases, and as it pleases; it adds rules of its own invention to every thing prescribed to us; it extends or limits our duties according to its own fancy, whether they proceed from religion, politics, or morality.

There is nothing so strongly inculcated in monarchies, by the laws, by religion, and honor, as submission to the prince's will; but this very honor tells us that the prince ought never to command a dishonorable action, because this would render us incapable to serve him.

Gruillon refused to assassinate the duke of Guise, but he offered Henry III. to fight him. After the massacre of St. Bartholomew, Charles IX. having sent orders to all the governors in the several provinces for the Hugonots to be murdered, viscount Dorte, who commanded at Bayonne, wrote thus to the king, ^(S) *Sire, among the inhabitants of this town, and your majesty's troops, I could not find* ^{(S) See D' Aubigne's history.}
so

so much as one executioner; they are honest citizens and brave soldiers. We jointly therefore beseech your majesty to command our arms and lives in things that are practicable. This great and generous soul looked upon a base action as a thing impossible.

There is nothing that honor more strongly recommends to the nobility, than to serve their prince in a military capacity. In fact this is their favourite profession, because its dangers, its success, and even its miscarriages are the road to grandeur. And yet this very law of its own making, honor chuses to explain; and if it happens to be affronted, requires or permits us to retire.

It insists also that we should be at liberty either to seek or to reject employments; a liberty which it prefers even to an ample fortune.

Honor therefore has its supreme laws, to which education is obliged to conform. The chief of these are, that we are allowed to set a value upon our fortune, but it is absolutely forbidden to set any value upon our lives.

The second is, that when we are raised to a post or rank, we should never do or permit any thing which may seem to imply that we look upon ourselves as inferior to the rank we hold.

The third is, that those things which honor forbids are more rigorously forbidden, when the laws do not concur in the prohibition; and those it commands are more strongly insisted upon, when they happen not to be commanded by law.

C H A P. III.

Of Education in a despotic Government.

AS education in monarchies tends only to raise and ennoble the mind, so in despotic governments its only aim is to debase it. Here it must necessarily be servile; even in power such an education will be an advantage, because every tyrant is at the same time a slave.

Book
IV.
Chap. 3.

Excessive obedience supposes ignorance in the person that obeys: the same it supposes in him that commands; for he has no occasion to deliberate, to doubt, to reason; he has only to will.

In despotic states each house is a separate government. As education therefore consists chiefly in social converse, it must be here very much limited; all it does is to strike the heart with fear, and to imprint on the understanding a very simple notion of a few principles of religion. Learning here proves dangerous, emulation fatal; and as to virtue, Aristotle cannot think there is any one virtue belonging to slaves (*); if so, education in despotic countries is confined within a very narrow compass. (*) Polit. lib. 1.

Here therefore education is in some measure needless: to give something one must take away every thing; and begin with making a bad subject in order to make a good slave.

For why should education take pains in forming a good citizen, only to make him share in the public misery? If he loves his country, he will strive to relax the springs of government: if he miscarries, he will be undone; if he succeeds, he must expose himself, the prince, and his country to ruin.

C H A P.

CHAP. IV.

Difference between the effects of ancient and modern Education.

BOOK
IV.
Chap. 4.
& 5.

MOST of the ancients lived under governments that had virtue for their principle; and when this was in full vigor, they performed things unseen in our times, and such as are capable of astonishing our little souls.

Another advantage their education had over ours; it never was effaced by contrary impressions. Epaminondas, the last year of his life, said, heard, saw, and performed the very same things as at the age in which he received the first principles of his education.

In our days we receive three different or contrary educations, namely, of our parents, of our masters, and of the world. What we learn in the latter effaces all the ideas of the former. This in some measure arises from the contrast we experience between our religious and worldly engagements; a thing unknown to the ancients.

CHAP. V.

Of Education in a Republican Government.

IT is in a republican government that the whole power of education is required. The fear of despotic governments rises naturally of itself amidst threats and punishments; the honor of monarchies is favoured by the passions, and favours them in its turn: but virtue is a self-renunciation which is always arduous and painful.

This virtue may be defined, the love of the laws and of our country. As this love requires a constant

stant preference of public to private interest; it is the source of all the particular virtues; for they are nothing more than this very preference it self.

This love is peculiar to democracies. In these alone the government is intrusted to private citizens. Now government is like every thing else: to preserve it, we must love it.

Has it ever been heard that kings were not fond of monarchy, or that despotic princes hated arbitrary power?

Every thing therefore depends on establishing this love in a republic, and to inspire it ought to be the principal business of education; but the surest way of instilling it into children, is for parents to set them an example.

People have it generally in their power to communicate their ideas to their children; but they are still better able to transfuse their passions.

If it happens otherwise, it is because the impressions made at home are effaced by those they have received abroad.

It is not the young people that degenerate: they are not spoilt till those of maturer age are already sunk into corruption.

C H A P. VI.

Of some Institutions among the Greeks.

THE ancient Greeks, convinced of the necessity that people who live under a popular government should be trained up to virtue, made very singular institutions in order to inspire it. Upon seeing in the life of Lycurgus the laws that legislator gave to the Lacedæmonians, I imagine I am reading

Book IV. Chap. 5. the history of the Sevarambes. The laws of Crete were the model of those of Sparta; and those of Plato reformed them.

Let us reflect here a little on the extensive genius with which those legislators must have been endowed, to perceive that by striking at received customs, and by confounding all manner of virtues, they should display their wisdom to the universe. Lycurgus by blending theft with the spirit of justice, the hardest servitude with excess of liberty, the most rigid sentiments with the greatest moderation, gave stability to his city. He seemed to deprive her of all resources, such as arts, commerce, money, walls: ambition prevailed among the citizens without hopes of improving their fortune; they had natural sentiments without the tie of a son, husband, or father; and chastity was stript even of modesty and shame. This was the road that led Sparta to grandeur and glory; and so infallible were her institutions, that it signified nothing to gain a victory over her, without subverting her polity*.

By these laws Crete and Laconia were governed. Sparta was the last that fell a prey to the Macedonians, and Crete to the Romans†. The Samnites had the same institutions, which furnished those very Romans with the subject of four and twenty triumphs^(a).

(a) Florus,
lib. 1.

A character so extraordinary in the institutions of Greece, has shewn itself lately in the dregs and cor-

* Philopæmen obliged the Lacedæmonians to change their manner of educating their children, being convinced that if he did not take this measure they would always have a great soul and a noble heart. *Plutarch, Life of Philopæmen*. See Livy book 38.

† She defended her laws and liberty for the space of three years. See the 98th 99, and 100 book of Livy in Florus's epitome; she made a braver resistance than the greatest kings.

ruption of our modern times||. A very honest legislator has formed a people, to whom probity seems as natural as bravery to the Spartans. Mr. Pen is a real Lycurgus; and tho' the former made peace his principal aim, as the latter did war, yet they resemble one another in the singular way of living to which they reduced their people, in the ascendant they had over free men, in the prejudices they overcame, and in the passions they subdued.

Another example we have from Paraguay. This has been the subject of an invidious charge against a society, that considers the pleasure of commanding as the only happiness in life: but it will be always a glorious undertaking to render government subservient to human happiness*.

It is glorious indeed for this society to have been the first in pointing out to those countries the idea of religion joined with that of humanity. By repairing the devastations of the Spaniards, she has begun to heal one of the most dangerous wounds that the human species ever received.

An exquisite sensibility to whatever she distinguishes by the name of honour, her zeal for a religion which is far more humbling in respect to those that hear than to those that preach it, have set her upon vast undertakings, which she has accomplished with success. She has drawn wild people from their woods, secured them a maintenance, and clothed their nakedness; and had she only by this means improved the industry of mankind, it would have been sufficient to eternize her fame.

|| In *facte Romuli*, Cicero.

* The Indians of Paraguay do not depend on any particular lord, they pay only a fifth of the taxes, and are allowed the use of fire-arms to defend themselves.

THE SPIRIT

Those who shall attempt hereafter to introduce such institutions as these, must establish the community of goods as prescribed in Plato's republic; that high respect he required for the gods; that separation from strangers for the preservation of people's morals; and an extensive commerce carried on by the community and not by private citizens: they must give our arts without our luxury, and our wants without our desires.

They must proscribe money, the effect of which is to swell people's fortunes beyond the bounds prescribed by nature; to learn to preserve for no purpose what has been idly hoarded up; to multiply without end our desires; and to supply the sterility of nature, of whom we have received very scanty means of inflaming our passions and of corrupting each other.

(c) Plutarch in his questions concerning the Greek affairs.

"The Epidamnians (c) perceiving their morals depraved by conversing with barbarians, chose a magistrate for making all contracts and sales in the name and behalf of the city." Commerce then does not corrupt the constitution, and the constitution does not deprive the society of the advantages of commerce.

CHAP. VII.

In what Case these singular Institutions may be of Service.

INSTITUTIONS of this kind may be proper in republics, because they have virtue for their principle; but to excite men to honor in monarchies, or to imprint fear in despotic governments, less pains is necessary.

Besides they cannot take place but in a small state *, in which there is a possibility of a general education, and of training up the body of the people like a single family.

The laws of Minos, of Lycurgus, and of Plato, suppose a particular attention and care, which the citizens ought to have over one another's conduct. But an attention of this kind cannot be expected in the confusion, and multitude of affairs in which a large nation is intangled.

In institutions of this kind, money, as we have above observed, must be banished. But in great societies, the multiplicity, variety, embarrassment, and importance of affairs, as well as the facility of purchasing, and the slowness of exchange, require a common measure. In order to extend or support our power, we must be possessed of the means to which, by the unanimous consent of mankind, this power is annexed.

C H A P. VIII.

Explication of a Paradox of the Ancients, in respect to Manners.

THAT judicious writer Polybius informs us, that music was necessary to soften the manners of the Arcadians, who lived in a cold gloomy country; that the inhabitants of Cyrene who slighted music were the cruellest of all the Greeks, and that no other town was so immersed in luxury and debauch. Plato is not afraid to affirm that there is no possibility of

* Such as were formerly the cities of Greece.

Book
IV.
Chap. 8.

(^d) Life of
Pelopidas.

(*) Book
5th of me-
morable
Sayings.

(^f) Polit.
Book 3.
Chap. 4.

making a change in music, without changing likewise the frame of government. Aristotle, who seems to have wrote his politics only in order to contradict Plato, agrees with him notwithstanding, in regard to the power and influence of music over the manners of the people. This was also the opinion of Theophrastus, of Plutarch (^d), and of all the ancients; an opinion grounded on mature reflection; being one of the principles of their politics *. Thus it was they enacted laws, and thus they required that cities should be governed.

This I fancy may be explained in the following manner. It is observable that in the cities of Greece, especially those whose principal object was war, all lucrative arts and professions were considered as unworthy of a freeman. *Most arts*, says Xenophon (^e), *corrupt and enervate the bodies of those that exercise them; they oblige them to sit under a shade, or near the fire. They can find no leisure, either for their friends, or for the republic.* It was only by the corruption of some democracies that artisans became freemen. This we learn from Aristotle ^f, who maintains, that a well regulated republic will never give them the right and freedom of the city †.

* Plato in his fourth book of laws, says, that the præfectures of music and gymnastic exercises are the most important employments in the city; and in his Republic, Book 3. Damon will tell you, says he, what sounds are capable of inspiring a meanness of soul, insolence, and the contrary virtues.

† Diophantes, says Aristotle, Polit. ch. 7. made a law formerly at Athens that artisans should be slaves to the republic.

Agriculture

Agriculture was likewise a servile profession, and generally practised by the inhabitants of conquered countries. Such as the *Helotes* among the Lacedæmonians, the *Perieciæ* among the Cretans, the *Penestes* among the Thessalians, and other conquered * people in other republics.

In fine, every kind of low commerce † was infamous among the Greeks; as it obliged a citizen to serve and wait on a slave, on a lodger, or a stranger. This was a notion that clashed with the spirit of Greek liberty: hence Plato (§) in his laws orders a citizen to be punished if he attempted to concern himself with trade. ^{(§) Book 2.}

Thus in the Greek republics the magistrates were extremely embarrassed. They would not have the citizens apply themselves to trade, to agriculture, or to the arts; and yet they would not have them idle ^(h). They found therefore employment for them in gymnastic and military exercises; and none else were allowed by their institution §. Hence the Greeks must be considered as a society of wrestlers and boxers. Now these exercises having a natural tendency to render people hardy and fierce, there was a necessity for tempering them with ^{(h) Arist. Polit. lib. 10.}

* Plato likewise and Aristotle require slaves to till the land, *Laws Book 5. Polit. Book 7. c. 10.* True it is that agriculture was not every where exercised by slaves: on the contrary, Aristotle observes, the best republics were those in which the citizens themselves tilled the land: but this was brought about by the corruption of the ancient governments, which were become democratical: for in earlier times the cities of Greece were subject to an aristocratic government.

† Cauponatio.

§ *Ars corporum exercendorum gymnastica, variis certaminibus terendorum pædotribica.* Aristot. Polit. 1. 8. c. 3.

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IV.
Chap. 8.

others that might soften their manners *. For this purpose, music, which influences the mind by means of the corporeal organs, was extremely proper. It is a kind of a medium between the bodily exercises that render men fierce and hardy, and speculative sciences that render them unsociable and sour. It cannot be said that music inspired virtue, for this would be inconceivable : but it prevented the effects of a savage institution, and enabled the soul to have such a share in the education, as it could never have had without the assistance of harmony.

Let us suppose among ourselves a society of men so passionately fond of hunting, as to make it their sole employment : these people would doubtless contract thereby a kind of rusticity and fierceness. But if they happened to receive a taste for music, we should quickly perceive a sensible difference in their customs and manners. In short, the exercises used by the Greeks excited only one kind of passions, viz. fierceness, anger, and cruelty. But music excites all those ; and is likewise able to inspire the soul with a sense of pity, lenity, tenderness, and love. Our moral writers, who declaim so vehemently against the stage, sufficiently demonstrate the power of music over the soul.

If the society abovementioned were to have no other music than that of drums and the sound of the trumpet ; would it not be more difficult to accomplish this end, than by the more melting tones

* Aristotle observes, that the children of the Lacedæmonians, who began these exercises at a very tender age, contracted from thence too great a ferocity and rudeness of behaviour.

of softer harmony? The ancients were therefore in the right, when under particular circumstances they preferred one mode to another in regard to manners.

But some will ask, why should music be pitched upon preferable to any other entertainment? It is because of all sensible pleasures, there is none that less corrupts the soul. We blush to read in Plutarch ⁽¹⁾ that the Thebans, in order to soften the manners of their youth, authorised by law a passion, ^{(1) Life of Pelopidas.} that ought to be proscribed by all nations.



BOOK V.

*That the Laws given by the Legislator
ought to be relative to the Principle
of Government.*

CHAP. I.

Idea of this Book.

BOOK
V.
Ch. 1. & 2.

THAT the laws of education ought to be relative to the principle of each government, has been shewn in the preceding book. Now the same may be said of those which the legislator gives to the whole society. This relation of laws to this principle, strengthens the several springs of government, and this principle receives from thence, in its turn, a new degree of strength. And thus it is in mechanics, that action is always followed by reaction.

Our design is to examine this relation in each government, beginning with the republican state whose principle is virtue.

CHAP. II.

What is meant by Virtue in a Political State.

VIRTUE in a republic is a most simple thing; it is a love for the republic; it is a sensation, and not a consequence of acquired knowledge: a sensation that may be felt by the meanest as well as by the highest person in the state. When the

the common people adopt good maxims, they adhere to them steadier than those we call gentlemen. It is very rare that corruption commences with the former; nay they frequently derive from their imperfect light a stronger attachment to the established laws and customs.

The love of our country is conducive to a purity of morals, and the latter is again conducive to the love of our country. The less we are able to satisfy our particular passions, the more we abandon ourselves to those of a general nature. How comes it that monks are so fond of their order? It is owing to the very cause that renders the order insupportable. Their rule debars them of all those things by which the ordinary passions are fed; there remains therefore only this passion for the very rule that torments them. The more austere it is, that is, the more it curbs their inclinations, the more force it gives to the only passion it leaves them.

C H A P. III.

What is meant by a Love of the Republic in a Democracy.

A Love of the republic in a democracy, is a love of the democracy; a love of the democracy is that of equality.

A love of the democracy is likewise that of frugality. As every individual ought to have here the same happiness and the same advantages, they ought consequently to taste the same pleasures and to form the same hopes; which cannot be expected but from a general frugality.

The

The love of equality in a democracy, limits ambition to the sole desire, the sole happiness of doing greater services to our country than the rest of our fellow citizens. They cannot all render her equal services, but they ought all to serve her with equal alacrity. At our coming into the world, we contract an immense debt to our country, which we can never discharge.

Hence distinctions arise here from the principle of equality, even when it seems to be removed by signal services, or superior abilities.

The love of frugality limits the desire of having to the attention requisite for procuring necessities to our family, and superfluities to our country. Riches give a power which a citizen cannot use for himself, for then he would be no longer equal. They likewise procure pleasures which he ought not to enjoy, because these would also subvert the equality.

Thus well regulated democracies, by establishing domestic frugality, made way at the same time for public expences, as was the case at Rome and Athens, when munificence and profusion arose from the very fund of frugality. And as religion requires us to have pure and unspotted hands when we make our offerings to the Gods, the laws require a frugality of life to enable us to be liberal to our country.

The good sense and happiness of individuals depend greatly on the mediocrity of their talents and fortunes. Therefore as a republic, where the laws have placed many in a middling station, is composed of wise men, it will be wisely governed; as it is composed of happy men, it will be extremely happy.

C H A P.

O F L A W S.

C H A P. IV.

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B O O K
V.
Chap. 4.

In what manner the Love of Equality and Frugality is inspired.

TH E love of equality and of a frugal economy is greatly excited by equality and frugality themselves, in societies, where both these virtues are established by law.

In monarchies and despotic governments, no body aims at equality; this does not so much as enter their thoughts; they all aspire to superiority. People of the very lowest condition desire to emerge from their obscurity only to lord it over their fellow subjects.

It is the same with respect to frugality. To love it we must practise and enjoy it. It is not those who are enervated with pleasure, that are fond of a frugal life; were this natural and common, Alcibiades would never have been the admiration of the universe. Neither is it those who envy or admire the luxury of the great; people that have present to their view none but rich men or men miserable like themselves, detest their miserable condition, without loving or knowing the real term or point of misery.

A true maxim it is therefore, that in order to love equality and frugality in a republic, these virtues must have been previously established by law.

C H A P.

CHAP. V.

In what manner the Laws establish Equality in a Democracy.

BOOK
V.
Chap. 5.

SOME ancient legislators, as Lycurgus and Romulus, made an equal division of lands. A settlement of this kind can never take place but upon the foundation of a new republic; or when the old one is so corrupt, and the minds of the people so disposed, that the poor think themselves obliged to demand, and the rich obliged to consent to, a remedy of this nature.

If the legislator, in making a division of this kind, does not enact laws at the same time to support it, he forms only a temporary constitution; inequality will break in where the laws have not precluded it, and the republic will be utterly undone.

Hence for the preservation of this equality it is absolutely necessary there should be some regulation in respect to women's dowries, donations, successions, testamentary settlements, and all other forms of contracting. For were it once allowed to dispose of our property to whom and how we pleased, the will of each individual would disturb the order of the fundamental law.

(^k) Plutarch, life of Solon.

(^l) *ibid.*

Solon, by permitting the Athenians upon failure of issue (^k) to leave their estates to whom they pleased, acted contrary to the ancient laws by which the estates were ordered to continue in the family of the testator (^l); and even contrary to his own laws, for by abolishing debts he had aimed at equality.

The law which prohibited people's having two inheritances * was extremely well adapted for a democracy. It derived its origin from the equal distribution of lands and portions made to each citizen. The law would not permit a single man to possess more than a single portion.

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Chap. 5.

From the same source arose those laws by which the next relation was ordered to marry the heiress. This law was given to the Jews after the like distribution. Plato (^m), who grounds his laws on this division, made the same regulation, which had been received as a law by the Athenians. (^m) Republic. book 8.

At Athens there was a law whose spirit, in my opinion, has not been hitherto rightly understood. It was lawful to marry a sister only by the father's side, but it was not permitted to marry a sister by the same venter †. This custom was originally owing to republics, whose spirit it was not to let two portions of land, and consequently two inheritances, devolve on the same person. A man that married his sister only by his father's side, could inherit but one estate, namely, that of his father; but by marrying his sister by the same venter, it might happen that this sister's father having no male issue, might leave her his estate, and consequently the brother that married her, might be possessed of two.

Little will it avail to object what Philo

* Philolaus of Corinth made a law at Athens that the number of the portions of land and that of inheritances should be always the same. *Arist. Polit. lib. 2. cap. 12.*

† *Cornelius Nepos in præfat.* This custom began in the earliest times. Thus Abraham says of Sarah, *she is my sister, my father's daughter, but not my mother's.* The same reasons occasioned the establishing the same law among different nations.

says,

Book V. Chap. 5. says *, that tho' the Athenians were allowed to marry a sister by the father's side and not by the mother's, yet the contrary practice prevailed among the Lacedæmonians, who were permitted to marry a sister by the mother's side, and not by the father's.

(^h) Lib. 10. For I find in Strabo (^h) that at Sparta, whenever a woman married her brother she had half his portion for her dowry. Plain it is that this second law was made in order to prevent the bad consequences of the first. That the estate belonging to the sister's family might not devolve on the brother's, they gave half the brother's estate to the sister for her dowry.

Seneca †, speaking of Silanus, who had married his sister, says, that the permission was limited at Athens, but general at Alexandria. In a monarchical government there was very little concern about any such thing as a division of estates.

(ⁱ) Plato has a law of this kind, lib. 3. leg. Excellent was that law, which, in order to maintain this division of lands in a democracy, ordained that a father who had several children, should pitch upon one of them to inherit his portion (ⁱ), and leave the others to be adopted, to the end that the number of citizens might always be kept upon an equality with that of the divisions.

(^k) Aristot. lib. 2. cap. 7. Phaleas of Chalcedon (^k) contrived a very extraordinary method of rendering all fortunes equal, in a republic where there was the greatest inequality. This was, that the rich should give fortunes with their daughters to the poor, but should receive none themselves; and that the poor should

* *De specialibus legibus quæ pertinent ad præcepta Decalogi.*

† *Athenis dimidium licet, Alexandria totum. Seneca de morte Claudii.*

receive money for their daughters, instead of giving them fortunes. But I do not remember that a regulation of this kind ever took place in any republic. It lays the citizens under such hard and odious conditions, as would make them detest the very equality which they designed to establish. It is proper sometimes that the laws should not seem to tend so directly to the end they propose.

Tho' real equality be the very soul of a democracy, yet it is so difficult to establish, that an extreme exactness in this respect would not be always convenient. Sufficient it is to establish a census*, which should reduce or fix the differences to a certain point: it is afterwards the business of particular laws to level as it were the inequalities, by the duties laid upon the rich, and by the ease they afford to the poor. It is moderate riches alone that can give or suffer this sort of compensations; for as to men of over-grown estates, every thing which does not contribute to advance their power and honor, is considered by them as an injury.

All inequality in a democracy ought to be derived from the nature of the democracy, and even from the principle of equality. For example, it may be apprehended that people who are obliged to live by their labour, would be too much impoverished by a public office, or neglect the duties attending it; that artisans would grow insolent; and that too great a number of freedmen would overpower the ancient citizens. In this case the

* Solon made four classes, the first, of those who had an income of 500 minas either in corn or liquid fruits; the second, of those who had 300, and were able to keep a horse; the third, of those who had only 200; the fourth, of all those who lived by their manual labour. *Plut. Life of Solon.*

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equality of the citizens * in a democracy may be suppressed, whenever it will conduce to the utility of the state. But then it is only an apparent equality they remove: for a man ruined by a public office would be in a worse condition than the rest of his fellow citizens, and this same man being obliged to neglect his duty would reduce the other citizens to a worse condition than himself, and so on.

CHAPTER VI.

In what manner the Laws ought to maintain Frugality in a Democracy.

IT is not sufficient in a well regulated democracy that the divisions of land be equal; they ought also to be small, as was customary among the Romans. “God forbid, said Curius to his soldiers †, that a citizen should look upon that as a small piece of land, which is sufficient to support a man.”

As the equality of fortunes supports frugality, frugality supports the equality of fortunes. These things, tho’ in themselves different, are of such a nature as to be unable to subsist separately; each is the cause and the effect; if one withdraws itself from a democracy, it is surely followed by the other.

True it is that when a democracy is founded on commerce, private people may acquire vast riches without a corruption of morals. This is because the spirit of commerce is naturally attended with

* Solon excludes from public employments all those of the fourth class.

† They insisted upon a larger division of the conquered lands. Plutarch’s moral works, Lives of the ancient Kings and Commanders.

that of frugality, œconomy, moderation, labour, prudence, tranquillity, order, and rule. As long as this spirit subsists, the riches it produces have no bad effect. The mischief is when excessive wealth destroys this spirit of commerce; then it is that the inconveniences of inequality begin to be felt.

In order to support the spirit of commerce, it should be carried on by the principal citizens; this spirit alone ought to prevail without being crossed by another; all the laws should encourage it; and these very laws, by dividing the estates of individuals in proportion to the increase of commerce, should set every poor citizen so far at his ease as to be able to work like the rest, and every rich citizen in such a mediocrity as to be obliged to labour either to preserve or to acquire his wealth.

It is an excellent law in a trading republic, to make an equal division of the father's estate among the children. The consequence of this is, that how great soever a fortune the father has made, his children being not so rich as he, are induced to avoid luxury, and to follow the parent's industrious example. I speak here only of trading republics, for as to those that have no commerce, the legislator must pursue quite different measures §.

In Greece there were two sorts of republics: the one military, like Sparta; the other commercial, as Athens. In one the citizens were obliged to be idle; in the other endeavours were used to inspire

§ In these the portions or fortunes of women ought to be very much limited.

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them with the love of industry and labour. Solon made idleness a crime, and insisted that each citizen should give an account of his manner of getting a livelihood. In fact, in a well regulated democracy, where people's expences ought to extend only to what is necessary, every one ought to have as much as his necessities require; for how could his wants be otherwise supplied?

CHAP. VII.

Other methods of favouring the principle of Democracy.

AN equal division of lands cannot be established in all democracies. There are some circumstances in which a regulation of this nature would be impracticable, dangerous, and even subversive of the constitution. We are not always obliged to proceed to extremes. If it appears that this division of lands, which was designed to preserve the people's morals, does not suit with the democracy, recourse must be had to other methods.

If a fixt body be established to serve as a rule and pattern of manners, a senate, to which age, virtue, gravity, and public services gain admittance; the senators, by being exposed to public view like the statues of the Gods, must naturally inspire sentiments that will transfuse themselves into the bosom of every family.

Above all, this senate must steadily adhere to the ancient institutions, and mind that the people and the magistrates never swerve from them.

The preservation of the ancient customs is a very considerable point in respect to manners. Since a corrupt

corrupt people seldom perform any memorable actions, seldom establish societies, build cities, or enact laws; on the contrary, since most institutions are derived from people of simple or severe morals; to recall men to the ancient maxims is generally recalling them to virtue.

Besides, if there happens to be any revolution, by which the state has assumed a new form, this seldom can be effected without infinite pains and labour, and hardly ever with idleness and a depravation of manners. Even those who have been the instruments of the revolution, are desirous it should be relished, which is difficult to compass without good laws. Therefore ancient institutions are generally reformations, and modern ones abuses. In the course of a long administration the descent to vice is insensible; but there is no re-ascending to virtue without making the most generous efforts.

It has been questioned whether the members of the senate we are here speaking of, ought to be for life, or chosen only for a time. Doubtless they ought to be for life, as was the custom at Rome §, at Sparta *, and even at Athens. For we must not confound what was called the senate at Athens, which was a body that changed every three months, with the Areopagus, whose members, as perpetual models, were established for life.

§ The magistrates there were annual, and the senators for life.

* Lycurgus, says Xenophon *de Repub. Lacedæm.* ordained that the senators should be chosen from amongst the old men, to the end that they should not be neglected in the decline of life; thus by making them judges of the courage of young people he rendered the old age of the former more honourable than the strength and vigour of the latter.

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Let this be therefore a general maxim: that in a senate designed to be a rule, and the depositary, as it were, of manners, the members ought to be chosen for life: in a senate designed for the administration of affairs, the members may be changed.

The spirit, says Aristotle, waxes old as well as the body. This reflection holds good only in regard to a single magistrate, but cannot be applied to a senatorian assembly.

At Athens beside the Areopagus, there were guardians of the people's morals, and guardians of the laws ||. At Sparta all the old men were censors. At Rome the censorship was committed to two particular magistrates. As the senate watched over the people, the censors were to have an eye over the people and the senate. Their office was to reform the corruptions of the republic, to stigmatize indolence, to censure irregularities, and to correct faults; and as for notorious crimes, these were left to the punishment of the laws.

That Roman law, which required the accusations of adultery to be public, was admirably well calculated for preserving the purity of morals; it intimidated married women, as well as those who were to watch over their conduct.

Nothing contributes more to the preservation of morals, than an extreme subordination of the young to the old. Thus they are both restrained, the former by the respect they have for those of advanced age, and the latter by the respect they have for themselves.

Nothing gives a greater force to the laws than a perfect subordination between the citizens and the

|| Even the Areopagus itself was subject to their censure.

magistrate.

magistrate. *The great difference which Lycurgus established between Sparta and the other cities, says Xenophon (*), consists chiefly in the obedience the citizens shew to the laws; they run, when the magistrate calls them. But at Athens a rich man would be highly displeased, to be thought dependent on the magistrate.*

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(2) Republic of the
Lacedæmonians.

Paternal authority is likewise of great use towards the preservation of morals. We have already observed that in a republic there is not so coercive a force as in other governments. The laws must therefore endeavour to supply this deficiency by some means or other; and this is done by paternal authority.

Fathers at Rome had the power of life and death over their children †. At Sparta every father had a right to correct another man's child.

Paternal authority ended at Rome together with the republic. In monarchies where such a purity of morals is not required, they are controuled by no other authority than that of the magistrates.

The Roman laws which accustomed young people to dependance, established a long minority. Perhaps we are mistaken in conforming to this custom; there is no necessity for so much constraint in monarchies.

This very subordination in a republic might make it necessary for the father to continue in the possession of his children's fortune during life, as was the custom at Rome. But this is not agreeable to the spirit of monarchy.

† We may see in the Roman history, how useful this power was to the republic. I shall give an instance even in the time of its greatest corruption. Aulus Fulvius was set out on his journey in order to join Catiline; his father called him back, and put him to death. Sallust *de bello Catil.*

CHAP. VIII.

In what manner the Laws ought to be relative to the principle of Government in an Aristocracy.

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IF the people are virtuous in an aristocracy, they enjoy very near the same happiness as in a popular government, and the state grows powerful. But as a great share of virtue is a very rare thing where men's fortunes are so unequal, the laws must tend as much as possible to infuse a spirit of moderation, and endeavour to re-establish that equality which was necessarily removed by the constitution.

The spirit of moderation is what we call virtue in an aristocracy; it supplies the place of the spirit of equality in a popular state.

As the pomp and splendor with which kings are surrounded, form a part of their power, so modesty and simplicity of manners constitute the strength of an aristocratic nobility*. When they affect no distinction, when they mix with the people, dress like them, and with them share all their pleasures, the people are apt to forget their subjection and weakness.

Every government has its nature and principle. An aristocracy must not therefore assume the nature and principle of monarchy; which would be the case, were the nobles to be invested with personal and particular privileges distinct from those

* In our days the Venetians, who in many respects may be said to have a very wise government, decided a dispute between a noble Venetian and a gentleman of Terra firma in respect to precedence in a church, by declaring that out of Venice a noble Venetian had no preeminence over any other citizen.

of their body ; privileges ought to be for the senate, and simple respect for the senators.

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In aristocratical governments there are two principal sources of disorder : excessive inequality between the governors and the governed ; and the same inequality between the different members of the body that governs. From these two inequalities, hatreds and jealousies arise, which the laws ought always to prevent or repress.

The first inequality is chiefly, when the privileges of the nobility are honorable only as they are ignominious to the people. Such was the law at Rome by which the Patricians were forbidden to marry Plebeians * ; a law that had no other effect than to render the Patricians on the one side more haughty, and on the other more odious †.

This inequality occurs likewise when the condition of the citizens differs with regard to taxes : Which may happen four different ways ; when the nobles assume the privilege of paying none ; when they commit frauds to exempt themselves || ; when they engross the taxes to themselves under pretence of rewards or appointments for their respective employments ; in fine, when they render the common people tributary, and divide among their own body the profits arising from the several subsidies. This last case is very rare ; an aristocracy so instituted would be the most intolerable of all governments.

* It was inserted by the Decemvirs in the two last tables. See Dionys. Halicarn. l. 10.

† It is easy to see the advantages the tribunes drew from thence in their speeches.

|| As in some aristocracies in Italy ; nothing is more prejudicial to the government.

While

While Rome inclined towards aristocracy, she avoided all these inconveniences. The magistrates never received any emoluments from their office. The chief men of the republic were taxed like the rest, nay heavier, and sometimes the taxes fell upon them alone. In fine, far from sharing among themselves the revenues of the state, all they could draw from the public treasure, and all the wealth that fortune flung in their way, they bestowed freely on the people, to be excused from accepting the honors which the latter wanted to confer *.

It is a fundamental maxim, that as pernicious as the effects of largesses are to the people in a democracy, so salutary are they in an aristocratical government. The former make them forget they are citizens, the latter bring them to a sense of it.

If the revenues of the state are not distributed among the people, they must be convinced at least of their being well administered: to feast their eyes with the public treasure is with them the same thing almost as enjoying it. The golden chain displayed at Venice, the riches exhibited at Rome in public triumphs, the treasures preserved in the temple of Saturn, were in reality the riches of the people.

It is a very essential point in an aristocracy, that the nobles themselves should not levy the taxes. The first order of the state in Rome never concerned themselves with it; the levying of taxes was committed to the second, and even this in process of time was attended with great inconveniences. In an aristocracy of this kind, where the nobles

* See in Strabo, l. 14. in what manner the Rhodians behaved in this respect.

levied the taxes, the private people would be all at the discretion of those who were in public employments; and there would be no such thing as a superior tribunal to check their power. The members appointed to remove the abuses, would rather enjoy them. The nobles would be like the princes of despotic governments, who confiscate whatever estates they please.

Soon would the profits hence arising be considered as a patrimony, which avarice would enlarge at pleasure. The farms would be lowered, and the public revenues reduced to nothing. This is the reason that some governments, without having ever received any remarkable shock, have dwindled away to such a degree, as not only their neighbours, but even their own subjects have been surprized at it.

The laws should likewise forbid the nobles all kind of commerce: merchants of such unbounded credit would monopolize all to themselves. Commerce is a profession of people who are upon an equality; hence among despotic states the most miserable are those in which the prince applies himself to trade.

The laws of Venice * debar the nobles from commerce, by which they might even innocently acquire exorbitant wealth.

The laws ought to employ the most effectual means for making the nobles do justice to the people. If they have not established a tribune, they ought to be a tribune themselves.

* *Amelot de la Houffaye*, of the government of Venice, part 3. The *Claudian* law forbid the senators to have any ship at sea, that held above forty bushels. *Liv.* l. 21.

Every

Every sort of asylum in opposition to the execution of the laws destroys aristocracy, and is soon succeeded by tyranny.

They ought always to mortify the pride of domineering. There should be either a temporary or perpetual magistrate to keep the nobles in awe, as the Ephori at Sparta, and the state Inquisitors at Venice, magistrates that are subject to no formalities. This sort of government stands in need of the strongest springs: thus a mouth of stone * is open to every informer at Venice, a mouth to which one would be apt to give the appellation of that of tyranny.

These tyrannical magistrates in an aristocracy bear some analogy to the censorship of democracies, which of its own nature is equally independent. In fact, the censors ought to be subject to no inquiry in relation to their conduct during their office; they should meet with a thorough confidence, and never be discouraged. In this respect the practice of the Romans deserved admiration; magistrates of all denominations were accountable for their administration †, except the censors ‖.

There are two very pernicious things in an aristocracy; either excess of poverty, or excess of wealth, in the nobility. To prevent their poverty, it is necessary above all things to oblige them

* The informers throw their scrolls into it.

† See *Livy*, I. 49. A censor could not be troubled even by a censor, each made his remark without taking the opinion of his colleague; and when it otherwise happened, the censorship was in a manner abolished.

‖ At Athens the *Logistæ*, who made all the magistrates accountable for their conduct, gave no account themselves.

to pay their debts in time. To moderate the excess of wealth, prudent and insensible regulations should be made; but no confiscations, no agrarian laws, no expunging of debts, these are things that are productive of infinite mischief.

The laws ought to abolish the right of primogeniture among the nobles*, to the end that by a continual division of the inheritances their fortunes may be always upon a level.

There should be no substitutions, no powers of redemption, no rights of *Majorazgo*, or adoption. The contrivances for perpetuating the grandeur of families in monarchical governments, ought never to be employed in aristocracies.

After the laws have compassed the equality of families, the next thing they have to do, is to preserve a proper harmony and union amongst them. The quarrels of the nobility ought to be quickly decided; otherwise the contests of individuals become those of families. Arbiters may terminate, or even prevent the rise of disputes.

In fine, the laws must not favour the distinctions raised by vanity among families, under pretence that they are more noble or ancient; pretences of this nature ought to be ranked among the weaknesses of private persons.

We have only to cast our eyes on Sparta; there we may see how the Ephori contrived to check the foibles of the kings, as well as those of the nobility and of the common people.

* It is so practised at Venice, *Amelot de la Houffaye*, p. 30, & 31.

† The main design of some aristocracies seems to be less the support of the state than of what they call their nobility.

C H A P. IX.

In what manner the Laws are relative to their Principle in monarchies.

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AS honor is the principle of a monarchical government, the laws ought to be relative to this principle.

They should endeavour to support the nobility, in respect to whom honor may be, in some measure, deemed both child and parent.

They should render the nobility hereditary, not as a boundary between the power of the prince and the weakness of the people, but as the bond and conjunction of both.

In this government, substitutions which preserve the estates of families undivided, are extremely useful, though in others not so proper.

Here the power of redemption is of service, as it restores to noble families the lands that had been alienated by the prodigality of a parent.

The lands of the nobility ought to have privileges as well as their persons. The monarch's dignity is inseparable from that of his kingdom; and the dignity of the nobleman from that of his fief.

All these privileges must be particular to the nobility, and incommunicable to the people, unless we intend to act contrary to the principle of government, and to diminish the power of the nobles together with that of the people.

Substitutions are a restraint to commerce; the power of redemption produces an infinite number of processes; every estate in land that is sold through-

throughout the kingdom, is in some measure without an owner for the space of a year. Privileges annexed to fiefs give a power that is very burthensome to those governments which tolerate them. These are the inconveniences of nobility; inconveniences however that vanish when confronted with the general utility which results from it: but when these privileges are communicated to the people, every principle of government is broke through to no manner of purpose.

In monarchies a person may leave the bulk of his estate to one of his children; a permission improper in any other government.

The laws ought to favour all kind of commerce * consistent with the constitution of this government, to the end that the subjects may, without ruining themselves, be able to satisfy the continual cravings of the prince and his court.

They should establish some fixed regulation, that the manner of collecting the taxes may not be more burthensome than the taxes themselves.

The weight of duties produces labor, labor weariness, and weariness the spirit of indolence.

C H A P. X.

Of the Expedition peculiar to the executive Power in Monarchies.

GREAT is the advantage which a monarchical government has over a republic: as the state is conducted by a single person, the exe-

* It is tolerated only in the common people. See the third law. Cod. de Comm. & Mercatoribus, which is full of good sense.

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cutive power is thereby enabled to act with greater expedition. But as this expedition may degenerate into rapidity, the laws should use some contrivance to slacken it. They ought not only to favour the nature of each constitution, but likewise to remedy the abuses that might result from this very nature.

(ⁿ) Tef-
tam. Polit.

Cardinal Richelieu (ⁿ) advises monarchs to permit no such thing as societies or communities that raise difficulties upon every trifle. If this man's heart had not been bewitched with the love of despotic power, still these arbitrary notions would have filled his head.

The bodies intrusted with the depositum of the laws, are never more obedient than when they proceed slowly, and use that reflexion in the prince's affairs which can scarcely be expected from the ignorance of the laws which prevails in a court, or from the precipitation of its councils*.

What would have become of the finest monarchy in the world, if the magistrates by their delays, by their complaints, by their prayers, had not stopped the rapidity even of their princes virtues, when these monarchs consulting only the generous impulse of great minds, wanted to give a boundless reward to services performed with a boundless courage and fidelity?

CHAP. XI.

Of the Excellence of a monarchical Government.

MONARCHY has a great advantage over a despotic government. As it na-

* *Barbaris cunctatio servilis, statim exequi regium videtur.*
Tacit. Annal. l. 5. turally

turally requires there should be several orders belonging to the constitution under the prince, the state is more fixt, the constitution more steady, and the person of him that governs more secure.

Cicero (*) is of opinion, that the establishing of the tribunes was the preservation of the republic. "*In fact*, says he, *the violence of a headless people is more terrible. A chief or head is sensible that the affair depends upon himself, and therefore he thinks; but the people in their impetuosity are ignorant of the danger into which they hurry themselves.*" This reflection may be applied to a despotic government, which is a people without tribunes; and to a monarchy, where the people have some sort of tribunes.

In fact, it is observable, that in the commotions of a despotic government, the people hurried away by their passions, push things always as far as they can go. The disorders they commit are all extreme; whereas in monarchies things are seldom carried to excess. The chiefs are afraid on their own account, they are afraid of being abandoned; and the intermediate dependent powers * do not chuse that the people should have too much the upper hand. It rarely happens that the states of the kingdom are intirely corrupted. The prince adheres to these, and the seditious who have neither will nor hopes to subvert the government, have neither power nor will to dethrone the prince.

In these circumstances men of prudence and authority interfere; moderate measures are first proposed, then complied with, and things at length

* See the first note of book 2. ch. 4.

BOOK are redressed; the laws resume their vigor, and
 V. command submission.
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Thus all our histories are full of civil wars without revolutions, while the histories of despotic governments abound with revolutions without civil wars.

The writers of the history of the civil wars of some countries, even they who fomented them, sufficiently demonstrate how little reason princes have to suspect the authority with which they invest particular bodies of men for their service; since even under the unhappy circumstance of their errors, they sighed only after the laws and their duty; and restrained, more than they were capable of inflaming, the impetuosity of the revolted ^(b).

(b) Memoirs of Cardinal de Retz and other histories.
 (c) Testament Polit.

Cardinal Richelieu, reflecting perhaps that he had too much reduced the states of the kingdom, has recourse to the virtues of the prince and of his ministers for the support ^(c) of the government: but he requires so many things, that indeed there is none but an angel capable of such attention, of such light, of such resolution, and knowledge; and scarce can we flatter ourselves ever to see such a prince and ministers, no not while monarchy subsists.

As people who live under a good government, are happier than those who without rule or leaders wander about the forests; so monarchs who live under the fundamental laws of their country, are far happier than despotic princes, who have nothing to regulate either their own or their subjects hearts.

O F L A W S.

C H A P. XII.

The same subject continued.

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13, & 14.

LET us not look for magnanimity in despotic governments; the prince cannot impart a grandeur which he has not himself: with him there is no such thing as glory.

'Tis in monarchies we see the subjects around the prince, receiving the influence of his beams; there it is that each person filling, as it were, a larger space, is capable of exercising those virtues which adorn the soul, not with independence, but with grandeur.

C H A P. XIII.

An idea of despotic Power.

WHEN the savages of Louisiana are desirous of fruit, they cut the tree to the root, and gather the fruit ^(d). This is an emblem of despotic government.

(d) Edifying letters
11. coll.
p. 315.

C H A P. XIV.

In what manner the laws are relative to the Principles of despotic Government.

THE principle of despotic government is fear; but a timid, ignorant, and faint-spirited people have no occasion for a great number of laws.

Every thing ought to depend here on two or three ideas; therefore there is no necessity that any new notions should be added. When we want to break a horse, we take care not to let him change his

master, his lesson, or his pace. Thus an impression is made on his brain by two or three motions, and no more.

If a prince is shut up in a seraglio, he cannot leave this voluptuous abode without alarming those who keep him confined. They cannot bear that his person and power should pass into other hands. He seldom therefore wages war in person, and hardly ventures to intrust the command to his generals.

A prince of this stamp, unaccustomed to resistance in his palace, is enraged to see his will opposed by armed force; hence he is generally governed by wrath or vengeance.

Besides, he can have no notion of true glory. War therefore is carried on under such a government in its full natural fury, and a less extent is given to the law of nations than in other states.

Such a prince has so many imperfections, that they are afraid to expose his natural stupidity to public view. He is concealed in his palace, and the people are ignorant of his situation. It is lucky for him, that the inhabitants of those countries need only the name of a prince to govern them.

When Charles XII. was at Bender, he met with some opposition from the senate of Sweden; upon which he wrote word home that he would send one of his boots to command them. This boot would have governed like a despotic prince.

If the prince is a prisoner, he is supposed to be dead, and another mounts the throne. The treaties made by the prisoner are void, his successor will not ratify them: in effect, as he is the law, the state, and the prince; when he is no longer a prince, he

is nothing: were he not therefore deemed to be dead, the state would be subverted.

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One thing which chiefly determined the Turks to conclude a separate peace with Peter I. was the Muscovites telling the Vizir, that in Sweden another prince had been set upon the throne ^(c).

(*) Continuation of Puffendorf's introduction to the history of Europe in the article of Sweden, ch.

The preservation of the state is only the preservation of the prince, or rather of the palace where he is confined. Whatever does not directly menace this palace or the capital, makes no impression on ignorant, proud, and prejudiced minds; and as for the concatenation of events, they are unable to trace, to foresee, or even to conceive it. Politics, with its several springs and laws, must here be very much limited; the political government is as simple as the civil*.

10.

The whole is reduced to reconciling the political and civil administration with the domestic government, the officers of state with those of the seraglio.

Such a state is happiest, when it can look upon itself as the only one in the world, when it is environed with deserts, and separated from those people whom they call Barbarians. Since it cannot depend on the militia, 'tis proper it should destroy a part of it self.

As fear is the principle of despotic government, its end is tranquillity: but this tranquillity cannot be called a peace; no, it is only the silence of those towns which the enemy is ready to invade.

* Since the strength does not lie in the state, but in the army that founded it; in order to defend the state, the army must be preserved, how formidable

* According to Sir John Chardin there is no council of state in Persia.

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Chap. 14.

soever to the prince. How then can we reconcile the security of the government, with that of the prince's person?

Observe how industriously the Russian government endeavours to temper its arbitrary power, which it finds more burthenfome than the people themselves. They have broke their great bodies of troops, mitigated criminal punishments, erected tribunals, entered into a knowledge of the laws, and instructed the people. But there are particular causes, that will probably oblige them to return to the very misery which they now endeavour to avoid.

In those states religion has more influence than any where else; it is a fear added to fear. In Mahometan countries it is partly from their religion that the people derive the surprizing veneration they have for their prince.

It is religion that amends in some measure the Turkish constitution. The subjects who have no attachment of honor to the glory and grandeur of the state; are attached to it by the force and principle of religion.

Of all despotic governments, there is none that labours more under its own weight, than that wherein the prince declares himself proprietor of all the lands, and heir to all his subjects. Hence the neglect of agriculture arises; and if the prince intermeddles likewise in trade, all manner of industry is ruined.

Under this sort of government nothing is repaired or improved (s). Houses are built only for the necessity of habitation, there is no such thing as digging of ditches, or planting of trees; every thing is drawn from, but nothing restored to the earth; the

(s) See Ricaut, State of the Ottoman Empire, p. 196.

the land lies untilld, and the whole country becomes a desert.

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Is it to be imagined that the laws which abolish the property of land and the succession of estates, will diminish the avarice and cupidity of the great? By no means. They will rather stimulate this cupidity and avarice. The great men will be prompted to use a thousand oppressive methods, imagining they have no other property than the gold and silver which they are able to seize upon by violence or to conceal.

To prevent therefore the utter ruin of the state, the avidity of the prince ought to be moderated by some established custom. Thus in Turkey the prince is satisfied with the right of three per cent. on the value of inheritances⁽ⁱ⁾. But as he gives the greatest part of the lands to his soldiery, and disposes of them as he pleases, as he seizes on all the estates of the officers of the empire at their decease, as he has the property of the estates of those who die without issue, and the daughters have only the usufruct, it thence follows that the greatest part of the estates of the country are possessed in a precarious manner.

(i) See concerning the inheritances of the Turks, *Ancient and modern Sparta*. See also Ricaut on the Ottoman Empire.

By the laws of *Bantam* † the king seizes on the whole inheritance, even wife, children, and habitation. In order to elude the cruellest part of this law, they are obliged to marry their children at eight, nine, or ten years of age, and sometimes younger, to the end that they may not be a wretched part of the father's succession.

† Collection of Voyages that contributed to the establishment of the East-India company, tom. 1. The law of *Pegu* is less cruel; if there happens to be children, the king succeeds only to two thirds, *ibid.* tom. 3. p. 1.

Constantin

G 4

In

de Bonneville.

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In countries where there are no fundamental laws, the succession to the empire cannot be fixt. The crown is then elective, and the right of electing is in the prince, who names a successor either of his own or of some other family. In vain would it be to establish here the succession of the eldest son; the prince might always chuse another. The successor is declared by the prince himself, or by a civil war. Hence a despotic state is, upon another account, more liable than a monarchical government to dissolution.

As every prince of the royal family is held equally capable of being chosen, hence it follows that the prince who ascends the throne, strangles immediately his brothers, as in Turkey; or puts out their eyes, as in Persia; or bereaves them of their understanding, as in the Mogul's country; or if these precautions are not used, as in Morocco, the vacancy of the throne is always attended with a horrid civil war.

(f) See the different constitutions, especially that of 1722.

By the constitutions of Russia (f) the Czar may chuse who he has a mind for his successor, whether of his own or of a strange family. Such a settlement produces a thousand revolutions, and renders the throne as tottering as the succession is arbitrary.

The right of succession being one of those things which are of most importance to the people to know; the best is that which most sensibly strikes them, such as a certain order of birth.

A settlement of this kind puts a stop to intrigues, and stifles ambition; the mind of a weak prince is no longer enslaved, nor is he made to speak his will as he is just expiring.

When the succession is established by a fundamental law, only one prince is the successor, and his brothers have neither a real nor apparent right to dispute

dispute the crown with him. They can neither pretend to, nor take any advantage of the will of a father. There is then no more occasion to confine or kill the king's brother than any other subject. B O O K
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Chap. 14.

But in despotic governments, where the prince's brothers are equally his slaves and his rivals, prudence requires that their persons be secured; especially in Mahometan countries where religion considers victory or success as a divine decision in their favour; so that they have no such thing as a monarch *de jure*, but only *de facto*.

There is far a greater incentive to ambition in countries where the princes of the blood are sensible that if they do not ascend the throne they must be either imprisoned or put to death, than amongst us, where they are placed in such a station, as may satisfy, if not their ambition, at least their moderate desires.

The princes of despotic governments have always perverted the use of marriage. They generally take a great many wives, especially in that part of the world where absolute power is in some measure naturalized, namely Asia. Hence they come to have such a multitude of children, that they can hardly have any great affection for them, nor the children for one another.

The reigning family resembles the state; it is too weak itself, and its head too powerful; it seems very numerous and extensive, and yet is suddenly extinct.

Artaxerxes ^(a) put all his children to death for conspiring against him. It is not at all probable that fifty children should conspire against their father, and much less that this conspiracy should be owing to his having refused to resign his concubine to his eldest (a) See Justin.

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& 15.

eldest son. It is more natural to believe that the whole was an intrigue of those oriental seraglios, where artifice, treachery, and deceit reign in silence, involved in thick obscurity ; where an old prince, grown every day more infirm, is the first prisoner of the palace.

After what has been said, one would imagine that human nature should perpetually oppose a despotic government. But notwithstanding the love of liberty, so natural to mankind, notwithstanding their innate detestation of force and violence, most nations are subject to this very government. This is easily accounted for. In order to form a moderate government, it is necessary to combine the several powers, to rule, temper, and set them in motion, to give, as it were, ballast to one in order to enable it to resist another. This is a master-piece of legislation, rarely produced by hazard, and seldom attained by prudence. On the contrary, a despotic government offers itself, as it were, at first sight ; it is uniform throughout ; and as passions only are requisite to establish it, this is what every capacity may reach.

CHAP. XV.

The same subject continued.

IN warm climates, where despotic power generally prevails, there is an earlier sensibility, as well as an earlier extinction of the passions^(e) ; the understanding is sooner ripened ; they are in less danger of squandering away their fortunes ; there is less facility in distinguishing themselves in the world ; less communication between young people, who are confined

at

(e) See the book of laws as relative to the nature of the climate.

at home; they marry much earlier, and consequently they may be sooner of age than in our European climates. In Turkey they are of age at fifteen (8).

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Chap. 15.
(8) *Lagu-
letiere*, an-
cient and
modern
Sparta.
p. 463.

Here there is no such thing as a cession of goods; in a government where there is no fixt property, people depend rather on the person than on his estate.

The cession of goods is naturally admitted in moderate governments *, but especially in republics, because of the greater confidence which arises from the probity of the citizens, and because of the lenity and moderation that a form of government, which every one seems to have framed for himself, ought to inspire.

Had the legislators of the Roman republic established the cession of goods †, they never would have been exposed to so many seditions and civil discords, nor would they have experienced the danger of the evils or the inconveniency of the remedies.

Poverty and the precariousness of property in a despotic state render usury natural, each person raising the value of his money in proportion to the danger he sees in lending it. Misery therefore pours in from all parts into those unhappy countries; they are bereft of every thing even of the resource of borrowing.

Hence it is that a merchant under this govern-

* The same may be said of compositions in regard to fair bankrupts.

† There was no such establishment made till the Julian law, *De cessione bonorum*; which preserved them from prison, and from an ignominious division of their goods.

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Chap. 15.

ment is unable to carry on a great trade; he lives from hand to mouth; were he to encumber himself with a large quantity of merchandises, he would lose more by the exorbitant interest he must give for money, than he could possibly get by the goods. Wherefore there are no laws here relating to commerce, they are all reduced to what is called the civil polity.

A government cannot be unjust without having hands to exercise its injustice. Now it is impossible but these hands will be grasping for themselves. The embezzling of the public money is therefore natural in despotic states.

As this is a common crime under this government, confiscations are very useful. By these the people are eased; the money drawn by this means being a considerable tribute which could hardly be raised on the exhausted subjects: neither is there in those countries any one family which the prince would be glad to preserve.

In moderate governments it is quite a different thing. Confiscations would render property uncertain, would strip innocent children, would destroy a whole family instead of punishing a single criminal. In republics they would be attended with the mischief of subverting equality which is the very foul of this government, by depriving a citizen of his necessary subsistence.

(^b) Authentica
bona damnatorum.
Cod. de bon. damn.

There is a Roman law (^b) against confiscations except in the case of *Crimen majestatis*, or high treason of the most heinous nature. It would be a prudent thing to follow the spirit of this law, and

* They seem to have been too fond of confiscations in the republic of Athens.

to limit confiscations to particular crimes. In countries where a local custom has rendered real estates alienable, Bodin very justly observes that confiscations should extend only to such as are purchased or acquired (f).

(f) Book 5.
ch. 3.

C H A P. XVI.

Of the Communication of Power.

IN a despotic government the power is communicated intire to the person entrusted with it. The vizir himself is the despotic prince; and each particular officer is the vizir. In monarchies the power is less immediately applied; being tempered by the monarch as he gives it *. He makes such a distribution of his authority, as never to communicate a part of it, without reserving a greater share to himself.

Hence in monarchies the particular governors of towns are not so dependent on the governor of the province, as not to be still more so on the prince; and the private officers of military bodies are not so far subject to their general, as not to owe still a greater subjection to their sovereign.

In most monarchies, it has been wisely regulated that those who have an extensive command, should not belong to any military body; so that as they have no authority but through the prince's particular pleasure, and as they may be employed or not, they are in some measure in the service, and in some measure out of it.

This is incompatible with a despotic government. For if those who are not actually employed, were

* Ut esse Phœbi dulcius lumen solet

Jamjam cadentis

nevertheless invested with privileges and titles, the consequence must be that there would be a kind of men in the state, who might be said to be great of themselves ; a thing directly opposite to the nature of this government.

Were the governor of a town independent of the bashaw, expedients would be daily necessary to make them agree ; which is highly absurd in a despotic state. Besides, if a particular governor might refuse to obey, how could the other answer for his province with his head ?

In this kind of government authority must ever be wavering ; nor is that of the lowest magistrate less steady than that of the despotic prince. Under moderate governments, the law is prudent in all its parts, is perfectly well known, and even the pettiest magistrates are capable of following it. But in a despotic state where the prince's will is the law, though the prince were wise, yet how could the magistrate follow a will he does not know ? He must certainly follow his own.

Again, as the law is only the prince's will, and as the prince can only will what he knows, it follows that there are an infinite number of people who must make their wills keep pace with his.

In fine, as the law is the momentary will of the prince, it is necessary that those who will for him, should follow his subitaneous manner of willing.

CH A P. XVII.

Of Presents.

IT is a received custom in despotic countries, never to address any superior whomsoever, not
3
excepting.

excepting their kings, without making them a present. The Mogul ^(s) never receives the petitions of his subjects, if they come with empty hands. These princes spoil even their own favours.

Book V.
Chap. 17.
(s) Collection of voyages that contributed to the establishment of the East India Company.
Tom. 1.
p. 80.

But thus it must ever be in a government where no man is a citizen; in a government where they have all a notion that a superior is under no obligation to an inferior; in a government where men imagine themselves bound by no other tie than the chastisements inflicted by one party over another; in a government in fine, where there is very little to do, and where the people have seldom an occasion of presenting themselves before the great, of offering their petitions, and much less their complaints.

In a republic presents are odious, because virtue stands in no need of them. In monarchies honor is a much stronger incentive than presents. But in a despotic government, where there is neither honor nor virtue, people cannot be determined to act but through hope of the conveniencies of life.

It is in conformity to republican ideas, that Plato ^(h) ordered those who received presents for doing ^(a) their duty, to be punished with death. *They must not take presents, says he, neither for good nor for evil actions.*

(a) Book 12. of Laws.

A very bad law that was among the Romans ⁽ⁱ⁾, which gave the magistrates leave to accept of small presents *, provided they did not exceed one hundred crowns the whole year. They who receive nothing expect nothing; they who receive a little, soon desire a little more, till at length their desires swell to an exorbitant height. Besides, it

(i) Leg. 5. §. ad leg. Jul. repet.

* Manufcula.

Book V. is much easier to convict a man, who knows him-
 Chap. 18. self obliged to accept of no present at all, and yet
 will accept of something, than a person who takes
 more when he ought to take less, and who always
 finds pretexts, excuses, and plausible reasons in jus-
 tification of his conduct.

C H A P. XVIII.

Of Rewards conferred by the Sovereigns

I N despotic governments, where, as we have
 already observed, the principal motive of action
 is the hope of the conveniencies of life, the prince
 who confers rewards, has nothing to bestow but
 money. In monarchies where honor alone predo-
 minates, the prince's rewards would consist only of
 marks of distinction, if the distinctions established
 by honor were not attended with luxury which
 necessarily brings on its wants: the prince there-
 fore is obliged to confer such honors as lead to
 wealth. But in a republic where virtue reigns, a
 motive self-sufficient and which excludes all others,
 the recompences of the state consist only of public
 attestations of this virtue.

It is a general rule, that great rewards in mo-
 narchies and republics, are a sign of their decline;
 because they are a proof of their principles being
 corrupted, and that the idea of honor has no
 longer the same force in monarchy, nor the title of
 citizen the same force in a republic.

The very worst Roman emperors, were those
 who were most profuse in their largesses, for exam-
 ple, *Caligula, Claudius, Nero, Otho, Vitellius, Com-*
modus, Heliogabalus, and Caracalla. The best, as
Augustus

Augustus, Vespasian, Antoninus Pius, Marcus Aurelius and *Pertinax*, were œconomists. Under good emperors the state resumed its principles; all other treasures were supplied by that of honor.

CHAP. XIX.

New Consequences of the Principles of the three Governments.

I CANNOT conclude this book without making some applications of my three principles.

It is a question, whether the laws ought to oblige a subject to accept of a public employment. My opinion is that they ought in a republic, but not in a monarchical government. In the former, public employments are attestations of virtue, depositories with which a citizen is intrusted by his country, for whom alone he ought to live, act, and think; consequently he cannot refuse them*. In the latter, public offices are testimonies of honor; now such is the capriciousness of honor, that it chuses to accept of none of these testimonies but when and in what manner it pleases.

The late king of Sardinia inflicted punishments † on his subjects that refused the dignities and public offices of the state. In this he unknowingly followed republican ideas; but his manner of governing in other respects sufficiently proves that this was not his intention.

* Plato in his Republic Book 8. ranks these refusals among the marks of the corruption of a republic. In his Laws, Book 6. he orders them to be punished by a fine; at Venice they are punished with banishment.

† Victor Amadeus.

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V.
Chap. 19.
II. Question.

Secondly, it is questioned whether a subject should be obliged to accept of a post in the army inferior to that which he held before? Among the Romans it was usual to see a captain serve the next year under his lieutenant *. This is because virtue in republics requires a continual sacrifice of our persons and of our repugnances for the good of the state. But in monarchies, honor true or false will never bear with what it calls degrading itself.

In despotic governments where honor, posts and ranks are equally abused, they indiscriminately make of a prince a scullion, and of a scullion a prince.

III. Question.

Thirdly it may be inquired, whether civil and military employments should be conferred on the same person? In republics, I think, they should be joined, but in monarchies separated. In republics it would be extremely dangerous to make the profession of arms a particular state, distinct from that of civil functions; and in monarchies no less dangerous would it be to confer these two employments on the same person.

In republics a person takes up arms only with a view to defend his country and its laws; it is because he is a citizen he makes himself for a while a soldier. Were these two distinct states, the person who under arms thinks himself a citizen, would soon be made sensible he is only a soldier.

In monarchies they whose condition engages them in the profession of arms, have nothing but glory, or

* Some centurions having appealed to the people for the employments which they had before enjoyed, *it is just, my comrades, said a centurion, that you should look upon every post as honorable in which you have an opportunity of defending the republic.* Livy Dec. 5. lib. 42.

at least honor or fortune, in view. To men therefore like these the prince should never give any civil employments; on the contrary they ought to be checked by the civil magistrate, that the same persons may not have at the same time the confidence of the people and the power to abuse it*.

We have only to cast an eye on a nation that may be justly called a republic disguised under the form of monarchy, and we shall see how jealous they are of making a separate order of the profession of arms, and how the military state is constantly allied with that of the citizen, and even sometimes of the magistrate, to the end that these qualities may be a pledge for their country, which should never be forgotten.

The division of civil and military employments, made by the Romans after the extinction of the republic, was not an arbitrary thing. It was a consequence of the change which happened in the constitution of Rome; it was natural to a monarchical government; and what was only commenced under Augustus †, succeeding emperors ‡ were obliged to finish, in order to temper the military government.

Procopius therefore, the competitor of Valens the emperor, was very much to blame, when conferring the proconsular dignity § upon Hormisdas, a prince of the blood royal of Persia, he re-

* Ne imperium ad optimos nobilium transferretur, Senatum militia vetuit Gallienus, etiam adire exercitum. *Aurelius Victor* de viris illustribus.

† Augustus deprived the senators, proconsuls, and governors of the privilege of wearing arms. *Dio l. 33.*

‡ Constantine. See *Zozimus lib. 2.*

§ *Ammianus Marcellinus lib. 26. More veterum & bella restituro.*

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flored to this magistracy the military command of which it had been formerly possessed; unless indeed he had very particular reasons for so doing. A person that aspires to the sovereignty, concerns himself less about what is serviceable to the state, than about what is likely to promote his own interest.

IV. Question.

Fourthly it is a question, whether public employments should be venal? They ought not, I think, in despotic governments, where the subjects must be instantaneously placed or displaced by the prince.

But in monarchies this venality is not at all improper, by reason it is an inducement to undertake that as a family employment, which would never be undertaken through a motive of virtue; it fixes likewise every one to his duty, and renders the several orders of the kingdom more permanent. Suidas^(k) very justly observes that Anastasius had changed the empire into a kind of aristocracy, by selling all public employments.

(k) Fragments taken from the embassies of Constantine Porphyrogenitus.
(l) Republic. lib. 8.

Plato^(l) cannot bear with this venality. "This is exactly, says he, as if a person was to be made a mariner or pilot of a ship for his money. Is it possible that this rule should be bad in every other employment of life, and hold good only in the administration of a republic?" But Plato speaks of a republic founded on virtue, and we of a monarchy. Now in monarchies (where though there were no such thing as a regular sale of public offices, still the indigence and avidity of the courtier would equally prompt him to expose them to sale) chance will furnish better subjects than the prince's choice. In fine, the method of attaining

attaining to honors through riches, inspires and cherishes industry *, a thing extremely wanting in this kind of government. Book V.
Chap. 19.

The fifth question is, in what kind of government Censors are necessary? My answer is, that they are necessary in a republic, where the principle of government is virtue. We must not imagine that criminal actions only are destructive of virtue; it is destroyed also by carelessness, by faults, by a certain coolness in the love of our country, by dangerous examples, by seeds of corruption, by whatever does not openly violate but elude the laws, by what does not subvert but weaken them; all this ought to fall under the inquiry and correction of the Censors. V. Question.

We are surprized at the punishment of the Areopagite, for killing a sparrow, which, to escape the pursuit of a hawk, had taken shelter in his bosom. Surprized we are also that an Areopagite should put his son to death for pulling out the eyes of a little bird. But let us reflect that the question here does not relate to a criminal condemnation, but to a judgment of manners in a republic founded on manners.

In monarchies there should be no Censors; monarchies are founded on honor, and the nature of honor is to have the whole universe for its Censor. Every man that fails in this respect, is subject to the reproaches even of those who are void of honor.

Here the Censors would be spoilt by the very

* We see the laziness of Spain, where all public employments are given away.

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Chap. 19.

people whom they ought to correct : they could not prevail against the corruption of a monarchy ; the corruption rather would be too strong against them.

Hence it is obvious that there ought to be no Censors in despotic governments. The example of China seems to derogate from this rule ; but we shall see in the course of this work, the particular reasons of that institution.



B O O K VI.

Consequences of the Principles of different Governments with respect to the Simplicity of civil and criminal Laws, the Form of Judgments, and the inflicting of Punishments.

C H A P. I.

Of the Simplicity of civil Laws in different Governments.

MONARCHIES do not permit of so great a simplicity of laws as despotic governments. For in monarchies there must be courts of judicature; these must give their decisions; the decisions must be preserved and learnt, that we may judge in the same manner to day as yesterday, and that the lives and property of the citizens may be as certain and fixt as the very constitution of the state.

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Chap. I.

In monarchies, the administration of justice which decides not only in whatever belongs to life and property, but likewise to honor, demands very scrupulous inquiries. The delicacy of the judge increases in proportion to the increase of his trust, and of the importance of the interests on which he determines.

We must not therefore be surprized to find so many rules, restrictions, and extensions in the laws of those countries; rules that multiply the particular cases, and seem to make of reason itself an art.

The difference of rank, birth and condition, established in monarchical governments, is frequently attended with distinctions in the nature of property; and the laws relative to the constitution of this government, may augment the number of these distinctions. Hence among us, goods are divided into real estates, purchases, dowries, paraphernalia, paternal and maternal estates; moveables of different kinds; estates held in fee simple, or in tail; acquired by descent or conveyance; allodial, or held by socage; ground rents, or annuities. Each sort of goods is subject to particular rules, which must be complied with in the disposal of them. These things must needs diminish the simplicity of the laws.

In our governments, the fiefs are become hereditary. It was necessary that the nobility should have a fixt property, that is, the fief should have a certain consistency, to the end that the proprietor of the fief might be always in a capacity of serving the prince. This must have been productive of great varieties; for instance, there are countries where fiefs could not be divided among the brothers; in others the younger brothers may be allowed a more generous subsistence.

The monarch who knows each of his provinces, may establish different laws, or tolerate different customs. But the despotic prince knows nothing, and can attend to nothing; he must take general measures; he governs by a rigid and inflexible will, which throughout his whole dominions produces the same effects; every thing bends under his feet.

In proportion as the decisions of the courts of judicature are multiplied in monarchies, the law is loaded with decrees that sometimes contradict one another, either because succeeding judges are of a different way of thinking; or because the same causes are sometimes well, and at other times ill defended; or in fine, by reason of an infinite number of abuses that slip into whatever passes through the hands of man. This is a necessary evil, which the legislator redresses from time to time, as contrary even to the spirit of moderate governments. For when people are obliged to have recourse to courts of judicature, this should come from the nature of the constitution, and not from the contradictions or uncertainty of the laws.

In governments where there are necessary distinctions of persons, there must likewise be privileges. This also diminishes the simplicity, and creates a thousand exceptions.

One of the privileges least burthensome to society, and especially to him who confers it, is that of pleading in one court preferably to another. Here new difficulties arise, when it becomes a question, before which court we shall plead.

Far different is the case of people under despotic governments. In those countries I can see nothing that the legislator is able to decree, or the magistrate to judge. As the lands belong to the prince, it follows, that there are scarce any civil laws concerning the property of lands. From the right the sovereign has to succeed to estates, it follows likewise that there are none relating to inheritances. The monopolies established by the prince for himself in some countries, render

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Chap. I.

all sorts of commercial laws quite useless. The marriages which they usually contract with the slaves, are the cause that there are scarce any civil laws relating to dowries or to the particular advantage of married women. From the prodigious multitude of slaves it follows likewise that there are very few who have any such thing as a will of their own, and of course are answerable for their conduct before a judge. Most moral actions that are only in consequence of a father's, a husband's, or a master's will, are regulated by them and not by the magistrates.

I forgot to observe, that as what we call honor, is a thing hardly known in those countries, the several points relating to this honor, which are of such importance with us, are with them quite out of the question. Despotic power is of itself sufficient; round it there is an absolute vacuum. Hence it is, that when travellers favour us with the description of countries where arbitrary sway prevails, they seldom make mention of civil laws *.

All occasions therefore of railing and of law-suits are here removed. And to this in part it is owing that litigious people in those countries are so roughly handled: as the injustice of their demand is neither screened, palliated, nor protected by an infinite number of laws, of course it is immediately discovered.

* In *Mazulipatan* it could never be found out that there was such a thing as written law. See the collection of voyages that contributed to the establishment of the India company, Tom. IV. Part I. p. 391. The Indians are regulated in their judgments by certain customs. The *Vedan* and such like books do not contain civil laws, but religious precepts. See *Lettres*, Ed. 14. collect.

C H A P. II.

Of the Simplicity of criminal Laws in different Governments.

WE hear it generally said that justice ought to be administered with us as in Turkey. Is it possible then that the most ignorant of all nations should be the most clear sighted in a point that it most behoves mankind to know?

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Chap. 2.

If we examine the set forms of justice in respect to the trouble the subject undergoes in recovering his property, or in obtaining satisfaction for an injury or affront, we shall find them doubtless too many: but if we consider them in the relation they have to the liberty and security of the subject, we shall often find them too few; and we shall be convinced that the trouble, expence, delays, and even the very dangers of our judiciary proceedings, are the price that every subject pays for his liberty.

In Turkey, where little regard is shewn to the honor, lives, or estates of the subject, all causes are one way or other quickly decided. The method of determining them is a matter of indifference, provided they be determined. The bashaw, after a quick hearing, orders which party he pleases to be bastinadoed, and then sends them about their business.

Here it would be dangerous to have the passion of litigiousness; this supposes a violent desire of obtaining justice, a strong aversion, a hurry of mind, and an obstinacy in pursuing revenge. All this should be avoided in a government, where fear
ought

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ought to be the only prevailing sentiment, and in which the least popular disturbances are frequently attended with sudden and unforeseen revolutions. Here every man ought to know that the magistrate must not hear his name mentioned, and that his security depends intirely on his being reduced to a kind of annihilation.

But in moderate governments, where the life of the meanest subject is deemed precious, no man is stript of his honor or property but after a long inquiry; and no man is bereft of life, till his very country has attacked him, an attack that is never made without leaving him all possible means of making his defence.

Hence it is that when a person renders himself absolute †, he immediately thinks of simplifying the laws. In a government thus constituted they are more affected with particular inconveniences, than with the liberty of the subject, which is very little minded.

In republics it is plain that as many formalities at least are necessary as in monarchies. In both governments they increase in proportion to the value which is set on the honor, fortune, liberty and life of the subject.

In republican governments men are all equal; equal they are also in despotic governments: in the former because they are every thing, in the latter because they are nothing.

† Caesar, Cromwell, and many others.

C H A P. III.

In what Governments and in what cases the judges ought to determine according to the express letter of the Law.

TH E nearer a government approaches to a republic, the more the manner of judging becomes settled and fixt; wherefore it was a fault in the republic of Sparta for the Ephori to pass such arbitrary judgments, without having any laws to direct them. The first consuls at Rome pronounced sentence in the same manner as the Ephori; but the inconveniency of this proceeding was soon felt, and they were obliged to have recourse to express and fixed laws.

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Chap. 3.

In despotic governments there are no laws; the judge himself is his own rule. There are laws in monarchies; and where these are explicit, the judge conforms to them; where they are otherwise, he endeavours to investigate their spirit. In republics the very nature of the constitution requires the judges to follow the letter of the law. Here there is no possibility of interpreting a law against a subject, in cases where either his honor, property, or life is concerned.

At Rome the judges had no more to do than to declare, that the person accused was guilty of a particular crime, and then the punishment was found in the laws, as may be seen in divers laws still extant. In England the jury determine whether the fact brought under their cognizance be proved or not; if it be proved, the judge pronounces the punishment inflicted by the law for such a particular fact, and for this he need only open his eyes.

C H A P.

C H A P. IV.

Of the manner of forming Judgments.

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HENCE arise the different manners of forming judgments. In monarchies the judges chuse the method of arbitration; they deliberate together, they communicate their thoughts in order to come to an agreement, they moderate their opinion to render it conformable to that of others; and the sentiments of the fewest become espoused by the two largest numbers. But this is not agreeable to the nature of a republic. At Rome and in the cities of Greece, the judges never entered into a consultation; each gave his opinion one of these three ways, *I absolve, I condemn, it does not appear clear to me* §: this was because the people judged, or were supposed to judge. But the people are far from being civilians; all these restrictions and methods of arbitration are above their reach; they must have only one object, and one single fact set before them; and then they have only to see whether they ought to condemn, to acquit, or to suspend their judgment.

The Romans introduced set forms for actions * after the example of the Greeks, and established a rule that each cause should be directed by its proper action. This was necessary in their manner of judging; it was necessary to fix the state of the question, that the people might have it always before their eyes. Otherwise in a long process,

§ *Non liquet.*

* *Quas actiones ne populus prout vellet institueret, certas solemnesque esse voluerunt. L. 2. § 6. Digest. de Orig. Jur.*

this

this state of the question would continually change and be no longer distinguished.

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& 5.

Hence it followed that the Roman judges granted only the simple demand, without making any addition, deduction, or limitation. But the *prætors* devised other forms for actions, which were called *ex bona fide*, where the method of pronouncing sentence was left to the disposition of the judge. This was more agreeable to the spirit of monarchy. Hence it is a saying among the French lawyers, *that in France § all actions are EX BONA FIDE.*

CHAP. V.

In what Governments the Sovereign may be Judge.

MACHIAVEL ⁽ⁱ⁾ attributes the loss of the liberty of Florence, to the people's not judging in a body in cases of high treason against themselves, as was customary at Rome. For this purpose they had eight judges: *but the few, says Machiavel, are corrupted by a few.* I should willingly adopt the maxim of this great man. But as in those cases the political interest prevails in some measure over the civil (for it is always an inconveniency that the people should be judge in their own cause) in order to remedy this evil, the laws must provide as much as possible for the security of individuals.

(i) Discourse on the first Decad of Livy. book 1. chap. 7.

With this view the Roman legislators did two things; they gave the persons accused, permission to banish themselves * before sentence was pronoun-

§ In France a person tho' sued for more than he owes, loses notwithstanding his costs, if he has not offered to pay as much as he owes.

* This is well explained in Cicero's oration *pro Cæcina*, towards the end.

ced;

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ced†; and they ordained that the goods of those who were condemned should be sacred, to prevent their being confiscated to the people. We shall see in the XIth book the other limitations that were set to the power the people had of judging.

Solon knew how to prevent the abuse which the people might make of their power in criminal judgments. He ordained that the court of Areopagus should re-examine the affair; that if they believed

(ⁱ) Demosthenes pro corona. p. 494, edit. Frankf. An. 1604.
(^k) See Philostratus's lives of the Sophists, book 1. Life of Æschines.

the party accused was unjustly acquitted (ⁱ), they should accuse him again before the people; that if they believed him unjustly condemned (^k), they should put a stop to the execution, and make them rejudge the proceeding. An admirable law that subjected the people to the censure of the magistracy which they most revered, and even to their own!

In affairs of this kind it is always proper to throw in some delays, especially when the party accused is under confinement; to the end that the people may grow calm and give their judgment coolly.

In despotic governments the prince himself may be judge. But in monarchies this cannot be; the constitution by such means would be subverted, and the dependent intermediate powers annihilated; all set forms of judgment would cease; fear would take possession of the people's minds, and paleness spread itself over every countenance: the more confidence, honour, affection, and security is in the subject, the more widely extended is the power of the monarch.

We shall give here a few more reflections on this point. In monarchies the prince is the party that prosecutes the persons accused, and causes them to be pu-

† This was a law at Athens, as appears by Demosthenes. Socrates refused to make use of it.

nished or acquitted; now were he himself to sit as judge, he would be both judge and party.

In this government the prince has frequently the benefit of confiscations; so that here again by being judge himself of crimes, he would be both judge and party.

Farther, by this means he would deprive himself of the most glorious attribute of sovereignty, namely, that of granting pardon †; for it would be quite ridiculous of him to make and unmake his decisions: surely he would not chuse to contradict himself. Besides, this would be confounding all ideas; it would be impossible to tell whether a man was acquitted, or received his pardon.

Lewis XIII. being desirous to sit as judge at the trial of the duke *de la Valette* *, assembled in his cabinet some members of the parliament together with some counsellors of state to consult about it: upon their being compelled by the king to give their opinion or judgment concerning the decree for his arrest, the president *de Believre* said, “That he found
“it very strange a prince should pass sentence upon
“one of his subjects; that kings had reserved to
“themselves the power of pardoning, and left that
“of condemning to their officers; that his majesty
“wanted to see before him at the bar, a person who
“by his decision was to be hurried away in an hour’s
“time into the other world! That this is what a
“prince’s countenance, from whence favours flow,
“should never bear; that his presence alone re-

† Plato does not think it right that kings, who, as he says, are priests, should preside at judgments where people are condemned to death, to exile, or imprisonment.

* See the relation of the trial of the duke de La Valette. It is printed in the memoirs of *Montresor*. Tom. 2. p. 62.

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“ moved ecclesiastic censures; and that subjects
“ ought not to go away dissatisfied from their
“ prince.” When sentence was passed, the same
president said, “ This is an unprecedented judg-
“ ment, to see, contrary to the example of past
“ ages, a king of France in the quality of a judge,
“ condemning a gentleman to death ⁽¹⁾.”

⁽¹⁾ It was
afterwards
revoked.
See the
same rela-
tion.

Again, sentences passed by the prince would be
an inexhaustible source of injustice and abuse; the
courtiers by their importunity would always be able
to extort his decisions. Some Roman emperors
were so mad as to sit as judges themselves; the con-
sequence was, that no reigns ever so surprized the
universe with oppression and injustice.

^(m) Annal.
lib. 11.

“ Claudius, says Tacitus ^(m), having appropriated
“ to himself the judgment of law-suits and the functi-
“ ons of magistrates, gave occasion to all manner of
“ rapine.” But Nero upon his coming to the
empire after Claudius, endeavoured to conciliate
the minds of the people, by declaring, “ That he
“ would take care not to be judge himself in pri-
“ vate causes, that the parties might not be ex-
“ posed within the walls of a palace to the iniqui-
“ tous power of a few freedmen ⁽ⁿ⁾.”

⁽ⁿ⁾ *ibid.*
lib. 13.
^(o) Hitt.
lib. 5.

“ Under the reign of Arcadius, says Zozimus ^(o),
“ a swarm of calumniators spread themselves all round,
“ and infected the court. Upon a person's decease it
“ was immediately supposed he had left no children *;
“ and in consequence of this, his property was given
“ away by a rescript. For as the prince was sur-
“ prizingly stupid, and the empress excessively enter-
“ prizing, she was a slave to the insatiable avarice
“ of her domestics and confidants; insomuch that to

* The same disorder happened under Theodosius the younger.

“ an

"an honest man nothing could be more desirable than death." B O O K VI.

"Formerly, says Procopius (P), there used to be Ch. 5, & 6. (P) Secret History.

"very few people at court; but in Justinian's reign,

"as the judges had no longer the liberty of administer-

"ing justice, their tribunals were deserted, while the

"prince's palace resounded with the clamours of the

"several litigating parties." Every body knows

what a prostitution there was at that court, of public judgments and even of the very laws themselves.

The laws are the eye of the prince; by them he sees what he could not otherwise discern. Should he attempt the function of a judge, he would not then labour for himself, but for impostors that want to deceive him.

C H A P. VI.

That in Monarchies the Ministers ought not to be Judges.

IT is likewise a very great inconveniency in monarchies for the ministers of the prince to be judges. We have still instances of states where there are a great number of judges to determine fiscal controversies, and where the ministers notwithstanding (a thing almost incredible!) want likewise to determine them. Many are the reflexions that here arise; but this single one will suffice for my purpose.

There is in the very nature of things a kind of contrast between a prince's council and his courts of judicature. The king's council ought to be composed of a few persons, and the courts of judicature of a great many. The reason is, in the former,

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things should be undertaken and pursued with a kind of warmth and passion, which can hardly be expected but from four or five men who make it their sole business. On the contrary in courts of judicature a certain coolness is requisite, and an indifference in some measure to all manner of affairs.

C H A P. VII.

Of a single Magistrate.

A Magistracy of this kind cannot take place but in a despotic government. We have an instance in the Roman history how far a single magistrate may abuse his power. Might it not be very well expected that *Appius* on his tribunal should condemn the laws, after having violated the very law of his own ^(b) enacting? ^(b) See the 2d law. § 24 ff. de Orig. Jur. Livy has given us the iniquitous distinction of the Decemvir. He had suborned a man to reclaim *Virginia* in his presence as his slave; *Virginia's* relations insisted that by virtue of his own law she should be consigned to them till the definitive judgment was passed. Upon which he declared that his law had been made only in favour of the father; and that as *Virginus* was absent, no application could be made of it to the present case ^(c).

(c) Quod paterpuellæ abesset, locum injuriæ esse ratus. Livius Dec. 1. lib. 3.

C H A P. VIII.

Of Accusations in different Governments.

IN Rome * it was lawful for one citizen to accuse another; this was according to the

* And in a great many other cities.

spirit

spirit of a republic, where each citizen ought to have an unlimited zeal for the public good, and where each citizen is supposed to hold the whole rights of his country in his hands. Under the emperors the republican maxims were still pursued; and instantly a pernicious set of men started up, a whole swarm of informers. Whosoever had numerous vices and abilities, a mean soul and an ambitious spirit, busied himself in the search of some criminal whose condemnation might be agreeable to the prince: this was the road to honor and fortune *; but luckily we are strangers to it in our country.

We have at present an admirable law, namely that which requires that the prince who is established for the execution of the laws, should appoint an officer in each court of judicature to prosecute all sorts of crimes in his name: by this means the profession of informers is a thing unknown to us; for if this public avenger were suspected to abuse his office, he would soon be obliged to name his author.

By Plato's laws ^(h), those who neglect to inform ⁽ⁱ⁾ Lib. 9. or to assist the magistrates, are liable to be punished. This would not be so proper in our days. The public prosecutor watches for the safety of the citizens; he proceeds in his office, while they enjoy the sweets of tranquillity.

* See in Tacitus the rewards given to these informers.

CHAP. IX.

Of the Severity of Punishments in different Governments.

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Chap. 9.

THE severity of punishments is fitter for despotic governments whose principle is terror, than for a monarchy or a republic whose spring is honor and virtue.

In moderate governments the love of one's country, shame and the fear of blame, are restraining motives, capable of preventing a great multitude of crimes. Here the greatest punishment of a bad action is conviction. The civil laws have therefore a softer way of correcting, and do not require so much force and severity.

In those states a good legislator is less bent upon punishing than preventing crimes; he is more attentive to inspire good morals than to inflict punishments.

It is a perpetual remark of the Chinese authors *, that the more the punishments of criminals were increased in their empire, the nearer they were to a revolution. This is because punishments were augmented in proportion as the public morals were corrupted.

It would be an easy matter to prove that in all or almost all the governments of Europe, punishments have increased or diminished in proportion as those governments favoured or discouraged liberty.

* I shall shew hereafter that China is in this respect in the same case as a republic or a monarchy.

In despotic governments people are so unhappy, as to have a greater dread of death than regret for the loss of life; consequently their punishments ought to be more severe. In moderate states, they are more afraid of losing their lives than apprehensive of the pain of dying; those punishments therefore that deprive them simply of life are sufficient.

Men in excess of happiness or misery are equally inclinable to severity; witness conquerors and monks. It is mediocrity alone and a mixture of prosperous and adverse fortune that inspire us with lenity and pity.

What we observe among particular men, is equally observable in different nations. In countries inhabited by savages who lead a very hard life, and in despotic governments, where there is only one person on whom fortune lavishes her favours, while the miserable subjects lie exposed to her insults, people are equally cruel. Lenity reigns in moderate governments.

When we read in history the horrid severity of the Sultans in the administration of justice, we feel a kind of pain upon considering the miseries of human nature.

In moderate governments, a good legislator may make use of every thing by way of punishment. Is it not a very extraordinary thing that one of the principal punishments at Sparta was to deprive a person of the power of lending out his wife, or of receiving the wife of another man, and to oblige him to have no company at home but virgins? In short whatever the law calls a punishment is such effectively.

CHAP. X.

Of the ancient French Laws.

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& 11.

IN the ancient French laws we find the true spirit of monarchy. In cases relating to pecuniary punishments the common people are less severely punished than the nobility*. But in criminal † cases it is quite the reverse; the nobleman loses his honor and his voice in court, while the peasant, who has no honor to lose, undergoes a corporal punishment.

CHAP. XI.

That when a People are virtuous, few Punishments are necessary.

THE people of Rome had some share of probity. Such was the force of this probity, that the legislator had frequently no farther occasion than to point out the right road, to induce them to follow it; one would imagine that instead of precepts it was sufficient to give them counsels.

The punishments of the regal laws and those of the twelve tables were almost all abolished in the time of the republic, in consequence either of the *Valerian* ‖, or

* Suppose for instance, to prevent the execution of a decree, the common people paid a fine of forty sous, and the nobility of sixty Livres: *Somme Rurale*. Book 2. p. 198. edit. Got. of the year 1512.

† See the council of *Peter Defontaines*, c. 13. especially the 22d. art.

‖ It was made by *Valerius Publicola* soon after the expulsion of the kings, and was twice renewed, both times by magistrates

or of the *Porcian* law †. It was never observed that this step did any manner of prejudice to the civil administration. B O O K
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This Valerian law which inhibited the magistrates from using any violent methods against a citizen that had appealed to the people, inflicted no other punishment on the person who infringed it, than that of being reputed a dishonest man (*).

(*) *Nil
ultra quam
improbè
factum ad-
jecit.* Liv.

C H A P. XII.

Of the Power of Punishments.

EXPERIENCE shews that in countries remarkable for the lenity of penal laws, the spirit of the inhabitants is as much affected by them, as in other countries by severer punishments.

If an inconveniency or abuse arises in the state, a violent government endeavours suddenly to redress it; and instead of putting the old laws in execution, it establishes some cruel punishment which instantly puts a stop to the evil. But the spring of government hereby loses its elasticity; the imagination grows accustomed to the severe as well as to the milder punishment; and as the fear of the latter diminishes, they are soon obliged in every case to have recourse to the other. Robberies on the high-way were grown common in some countries; in order to remedy this evil, they

gistrates of the same family, as Livy observes, l. 10. the question was not to give it a greater force, but to render its injunctions more perfect. *Diligentius sanctum.* says Livy, *ibid.*

† *Lex Porcia pro tergo civium lata.* It was made in the 454th year of the foundation of Rome.

invented

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invented the punishment of breaking upon the wheel, the terror of which put a stop for a while to this mischievous practice. But soon after robberies on the high-ways were become as common as ever.

Desertion in our days was grown to a very great height; in consequence of this it was judged proper to punish deserters with death; and yet their number did not diminish. The reason is very natural; a soldier accustomed daily to venture his life, despises or affects to despise the danger of losing it. He is daily habituated to the fear of shame; it would have been therefore much better to have continued a punishment which branded him with infamy for life: the punishment was pretended to be increased, while it was really diminished.

Men must not be led by excess of violence; we ought to make a prudent use of the means which nature has given us to conduct them. If we inquire into the cause of all human corruptions, we shall find that they proceed from the impunity of crimes, and not from the moderation of punishments.

Let us follow nature, who has given shame to man for his scourge; and let the heaviest part of the punishment be the infamy attending it.

But if there be some countries where shame is not a consequence of punishment, this must be owing to tyranny, which has inflicted the same punishments on villains and honest men.

And if there are others where men are deterred only by cruel punishments, we may be sure that this must in a great measure arise from the violence of the government, which has used such punishments for slight transgressions.

It

It often happens that a legislator desirous of reforming an evil, thinks of nothing but of this reformation; his eyes are open only to this object, and shut to its inconveniences. When the evil is redressed, there is nothing more seen but the severity of the legislator; yet there still remains an evil in the state that has sprung from this severity; the minds of the people are corrupted, and become habituated to despotic power.

Lysander ^(b) having obtained a victory over the Athenians, the prisoners were ordered to be tried in consequence of an accusation brought against the Athenians of having thrown all the captives of two galleys down a precipice, and of having resolved in full assembly to cut off the hands of those whom they should chance to make prisoners. The Athenians were therefore all massacred, except *Adymantes* who had opposed this decree. *Lysander* reproached *Philocles*, before he was put to death, with having depraved the people's minds and given lessons of cruelty to all Greece.

"*The Argives*, says Plutarch ^(c), *having put fifteen hundred of their citizens to death, the Athenians ordered sacrifices of expiation, that it might please the Gods to turn the hearts of the Athenians from so cruel a thought.*"

^(c) Morals, of those who are intrusted with the direction of state affairs.

There are two sorts of corruption; one when the people do not observe the laws; the other when they are corrupted by the laws: an incurable evil, because it is in the very remedy itself.

THE SPIRIT

CHAP. XIII.

Impotency of the Laws of Japan.

EXCESSIVE punishments may even corrupt a despotic government; of this we have an instance in Japan.

(d) See
Kempfer.

Here almost all crimes are punished with death (d), because disobedience to so great an emperor, as that of Japan, is reckoned an enormous crime. The question is not so much to correct the delinquent, as to vindicate the authority of the prince. These notions are derived from servitude, and are owing especially to this, that as the emperor is universal proprietor, almost all crimes are directly against his interests.

(e) Collection of
voyages
that contributed
to the establishment
of the
East India
Company.
Tom. 3.
p. 428.

They punish with death lies spoken before the magistrate (e); a proceeding contrary to natural defence.

Even things which have not the appearance of a crime are severely punished; for instance, a man that ventures his money at play is put to death.

True it is that the surprizing character of this obstinate, capricious, resolute, whimsical people, who defy all dangers and calamities, seems to absolve their legislators from the imputation of cruelty, notwithstanding the severity of their laws. But are men, who have a natural contempt of death, and who rip open their bellies for the least fancy, are such men, I say, mended or deterred, or rather are they not hardened, by the continual sight of punishments?

The relations of travellers inform us, with respect to the education of the Japanese, that children must be treated there with mildness, because
they

they become hardened to punishment; that their slaves must not be too roughly used, because they immediately put themselves in a posture of defence. Would not one imagine that they might easily have judged of the spirit which ought to reign in their political and civil government, from that which should prevail in their domestic concerns?

A wise legislator would have endeavoured to reclaim people's minds by a just temperature of punishments and rewards; by maxims of philosophy, morality, and religion, adapted to these characters; by a just application of the rules of honor, and by the enjoyment of a constant happiness and soft tranquillity of life. But these are springs to which despotic power is a stranger; it may abuse itself, and that is all it can do: in Japan it has made its utmost effort, and has surpassed even itself in cruelty.

As the minds of the people by this means grew wild and intractable, they were obliged to have recourse to the most horrid severity. This is the origin, this the spirit of the laws of Japan. They had more fury however than force. They succeeded in the extirpation of Christianity; but such unaccountable efforts are a proof of their impotence. They wanted to establish a good polity, and they have shewn greater marks of their weakness.

We have only to read the relation of the interview between the emperor and the Deyro at *Meaco* (f). The number of those who were suffocated or murdered in that city by ruffians, is incredible; young maids and boys were carried off by force, and found afterwards exposed in public places, at unseasonable hours, quite naked and sown in

(f) Collection of voyages that contributed to the establishment of the East India Company. Tom. 5. linen p. 2.

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linen bags, to prevent their knowing which way they had passed; robberies were committed in all parts, the bellies of horses were ripped open to bring their riders to the ground, and coaches were overturned in order to strip the ladies. The Dutch, who were told they could not pass the night on the scaffolds without exposing themselves to the danger of being assassinated, came down, &c.

(*) Ibid. I shall here give one instance more from the same nation. The emperor having abandoned himself to infamous pleasures, lived unmarried, and was consequently in danger of dying without issue. The Deyro sent him two beautiful young virgins; one he married out of respect, but would not meddle with her. His nurse caused the finest women of the empire to be sent for, but all to no purpose. At length an armorer's daughter having pleased his fancy (*); he determined to marry her, and had a son. The ladies belonging to court, enraged to see a person of such mean extraction preferred to themselves, stifled the child. The crime was concealed from the emperor; for he would have spilt a torrent of blood. The excessive severity of the laws hinders therefore their execution: when the punishment surpasses all measure, they are frequently obliged to prefer impunity to it.

C H A P. XIV.

Of the Spirit of the Roman Senate.

UNDER the consulate of Acilius Glabrio and Piso, the *Acilian* law * was made to

* Those that were guilty were condemned to a fine; they could not be admitted into the rank of senators, nor nominated to any public office. Dio Book 36.

prevent

prevent the intriguing for places. Dio says ^(h) that the senate engaged the consuls to propose it, by reason that C. Cornelius the tribune had resolved to cause most severe punishments to be established against this crime; to which the people seemed greatly inclined. The senate rightly judged that immoderate punishments would strike indeed a terror into people's minds, but must have also this effect, that there would be no body afterwards to accuse or condemn; whereas by proposing moderate punishments there would be always judges and accusers.

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Chap. 15,
^(h) Book
36.

C H A P. XV.

Of the Roman Laws in respect to Punishments.

I AM strongly confirmed in my sentiments upon finding the Romans on my side, and I think that punishments are connected with the nature of the government, when I behold this great people changing in this respect their civil laws in proportion as they altered their form of government.

The *regal* laws made for a multitude composed of fugitives, slaves, and vagabonds, were very severe. The spirit of a republic would have required that the Decemvirs should not have inserted those laws in their twelve tables; but men who aimed at tyranny were far from conforming to a republican spirit.

Livy ⁽ⁱ⁾ says in relation to the punishment of ⁽ⁱ⁾ Lib. 1. Metius Suffetius, dictator of Alba, who was condemned by Tullus Hostilius to be pulled to pieces by two chariots, that this was the first and last punishment in which the remembrance of humanity

Book VI. Chap. 15. nity seemed to have been lost. He is mistaken; the law of the twelve tables is full of very cruel punishments*.

The design of the decemvirs appears most conspicuous in the capital punishment pronounced against libellers and poets. This is not agreeable to the genius of a republic, where the people like to see the great men humbled. But persons that aimed at the subversion of liberty, were afraid of writings that might revive its spirit †.

After the expulsion of the decemvirs, almost all the penal laws were abolished. It is true they were not expressly repealed; but as the *Porcian* law had ordained that no citizen of Rome should be put to death, they were of no further use.

This is exactly the time to which we may refer what *Livy* says ^(k) of the Romans, that no people were ever fonder of moderation in punishments.

But if to the lenity of punishments we add the right which the party accused had of withdrawing before judgment was pronounced, we shall find that the Romans followed the spirit which I have observed to be natural to a republic.

Sylla who confounded tyranny, anarchy, and liberty, made the *Cornelian laws*. He seemed to have contrived regulations merely with a view to create new crimes. Thus distinguishing an infinite number of actions by the name of murder, he found murderers in all parts; and by a practice but too much followed, he laid snares, sowed thorns, and

* We find there the punishment of fire, and almost always capital punishments, theft, punished with death, &c.

† Sylla animated with the same spirit as the decemvirs, followed their example in augmenting the penal laws against satirical writers.

opened precipices, wheresoever the citizens set their feet.

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Almost all Sylla's laws contained only the interdiction of fire and water. To this Cæsar added the confiscation of goods *, because the rich by preserving their estates in exile, became bolder in the perpetration of crimes.

(^l) See the 3d law §.

Legis ad leg. Cornel. de Sicariis, and a vast

number of others in the Digest and in the Codex.

(^m) Sublimiores.

(ⁿ) Medios.

(^o) Infimos

leg. 3. §.

legis ad

leg. Cornel.

de Sicariis.

(^p) Jul.

Cap. Maximini duo.

The emperors having established a military government, soon found that it was as terrible to the prince as to the subject; they endeavoured therefore to temper it, and with this view had recourse to dignities and to the respect with which those dignities were attended.

The government thus drew nearer a little to monarchy, and punishments were divided into three classes (^l); those which related to the principal persons in the state (^m), which were very mild; those which were inflicted on persons of an inferior rank (ⁿ), and were more severe; and in fine such as concerned only persons of the lowest condition (^o), which were the most rigorous.

Maximinus, that fierce, that stupid prince, increased the rigour of the military government which he ought to have softened. The senate were informed, says Capitolinus (^p), that some had been crucified, others exposed to wild beasts, or sowed up in the skins of beasts lately killed, without any manner of regard to their dignity. It seemed as if he wanted to exercise the military discipline, on the model of which he pretended to regulate the civil administration.

In the considerations on the rise and declension of the Roman grandeur, we find, in what manner

* *Pœnas facinorum auxit, cum locupletes eò facilius scelere se obligarent, quod integris patrimoniis exularent. Suet. in Jul. Cæsare.*

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Constantine changed the military government into a military and civil one, and drew nearer to Monarchy. There we may trace the different revolutions of this state, and see how they fell from rigor to indolence, and from indolence to impunity.

CHAP. XVI.

Of the just Proportion betwixt Punishments and Crimes.

*Bentham's
works.
1. 38*

IT is an essential point that there should be a certain proportion in punishments, because it is essential that a great crime should be avoided rather than a lesser, and that which is more pernicious to society rather than that which is less.

(^q) Hist. of
Nicepho-
rus, patri-
arch of
Constanti-
nople.

“ An impostor (^q), who called himself Constan-
tine Ducas, raised a great insurrection at Constan-
tinople. He was taken and condemned to be
whipt; but upon informing against several per-
sons of distinction, he was condemned to be burnt
as a calumniator.” It is very extraordinary that
they should thus proportion the punishments betwixt
the crime of high-treason and that of calumny.

This puts me in mind of a saying of Charles II.
king of Great Britain. He saw a man one day stand-
ing in the pillory; upon which he asked what crime
the man had committed. He was answered, *Please
your majesty he has wrote a libel against your ministers.*
The fool! said the king, *why did not he write against
me? they would have done nothing to him.*

(^r) In Ni-
cephorus's
history.

“ Seventy persons having conspired against the
emperor Basil (^r); he ordered them to be whipt,
and the hair of their head and beards to be burnt.

“ A stag

“ A stag one day having taken hold of him by the
 “ girdle with his horn, one of his retinue drew his
 “ sword, cut the girdle, and saved him ; upon
 “ which he ordered that person’s head to be cut off,
 “ for having, *said he*, drawn his sword against his
 “ sovereign.” Who could imagine that the same
 prince could ever have passed two such different
 judgments ?

It is a great abuse amongst us to condemn to the
 same punishment a person that only robs on the
 high-way, and another that robs and murders.
 Surely for the public security some difference
 should be made in the punishment.

In *China* those who add murder to robbery, are
 cut in pieces ^(f) ; but not so the others : to this dif- ^{(f) Duhal-}
 ference it is owing that tho’ they rob in that country, ^{de, Tom.}
 yet they never murder. ^{1. p. 6.}

In *Russia* where the punishment of robbery and
 murder is the same, they always murder ^(t). The ^{(t) Present}
 dead, say they, tell no tales. ^{state of}

When there is no difference in the punishment, ^{Russia by}
 there should be some in the expectation of pardon. ^{Perry.}
 In *England* they never murder on the high way,
 because robbers have some hopes of transportation,
 which is never the case in respect to those that com-
 mit murder.

Letters of grace are of excellent use in moderate
 governments. This power which the prince has of
 pardoning, exercised with prudence, is capable of
 producing admirable effects. The principle of de-
 spotic government, which neither grants nor re-
 ceives any pardon, deprives it of these advantages.

CHAP. XVII.

Of the Rack.

BOOK
VI.
Chap. 17.

THE wickedness of mankind makes it necessary for the laws to suppose them better than they are. Hence the deposition of two witnesses is sufficient in the punishment of all crimes. The law believes them as if they spoke by the mouth of truth. Thus we judge that every child conceived in wedlock is legitimate; the law having a confidence in the mother as if she were chastity itself. But the use of the rack against criminals cannot be defended on a like plea of necessity.

We have before us the example of a nation blessed with an excellent civil government *, where without any inconveniency the practice of racking criminals is rejected. It is not therefore in its own nature necessary †.

So many men of learning and genius have wrote against the custom of torturing criminals, that after them I durst not presume to meddle with the subject. I was going to say that it might suit despotic states, where whatever inspires fear is the properest spring of government; I was going to say that the slaves among the Greeks and Ro-

* The English.

† The citizens of Athens could not be put to the rack (*Lyfias, orat. in Agorat.*) unless it was for high treason. The torture was used within thirty days after condemnation (*Curius Fortunatus Rhetor. Schol. lib. 2*) There was no preparatory torture: In regard to the Romans, the 3d and 4th law *ad leg. Juliam Majest.* shews that birth, dignity, and the military profession exempted people from the rack, except in cases of high treason. See the prudent restrictions of this practice made by the laws of the Visigoths.

mans——But I heard the voice of nature cry out loudly against me.

Book
VI.
Chap. 18.
& 19.

C H A P. XVIII.

Of pecuniary and corporal Punishments.

OUR ancestors the Germans admitted of none but pecuniary punishments. Those free and warlike people were of opinion that their blood ought not to be spilt but with sword in hand. On the contrary, these punishments are rejected by the Japanese^(u), under pretence that the rich might elude them. But are not the rich afraid of being stripped of their property? And might not pecuniary punishments be proportioned to people's fortunes? and in fine, might not infamy be added to these punishments? ^{(u) See Kempfer.}

A good legislator takes a just medium; he ordains neither always pecuniary, nor always corporal punishments.

C H A P. XIX.

Of the Law of Retaliation.

THE use of the *law of retaliation* * is very frequent in despotic countries, where they are fond of simple laws. Moderate governments admit of it sometimes; but with this difference, that the former exercise it in full rigour, and among the latter it always receives some kind of limitation.

The law of the twelve tables admitted two; first it never condemned to retaliation but when the plain-

* It is established in the Koran: See the *chapter of the Cow*.

BOOK
VI.
Chap. 20.
& 21.
(*) Ibid.
(y) See al-
so the law
of the Vi-
figoths
Book 6.
tit. 4. §. 3.
& 5.

tiff could not be satisfied in any other manner *,
Secondly, after condemnation they might pay da-
mages and interest (*), and then the corporal was
changed into a pecuniary punishment (y).

C H A P. XX.

*Of the punishment of Fathers for the Crimes of
their Children.*

(z) See
Garcilasso,
history of
the civil
wars of
the Spa-
niards.

I N, China fathers are punished for the crimes of
their children. This was likewise the custom
at Peru (z); a custom derived from the notion of
despotic power.

Little does it signify to say that in China the fa-
ther is punished for not having exerted that pater-
nal authority which nature has established and the
laws themselves have improved. This still sup-
poses that there is no honor among the Chinese.
Amongst us, parents whose children are condemned
to punishment, and children † whose parents have
undergone the like fate, are as severely punished by
shame, as they would be in China by the loss of
their lives.

C H A P. XXI.

Of the Clemency of the Prince.

CLEMENCY is the peculiar characteristic of
monarchs. In republics whose principle is vir-
tue, it is not so necessary. In despotic govern-

* Si membrum rupit, ni cum eo pacit, talio esto. *Aulus Gel-
lius*, lib. 20. cap. 1.

† Instead of punishing them, *says Plato*, they ought to be
commended for not having followed their father's example. *Book*
9. of laws.

ments where fear predominates, it is less customary, because the great men are to be restrained by examples of severity. It is more necessary in monarchies, where they are governed by honor, which frequently requires what the very law forbids. Disgrace is here equivalent to chastisement; and even the formalities of justice are punishments. This is because particular kinds of punishment are formed by shame which on every side invades the delinquent.

The great men in monarchies are so heavily punished by disgrace, by the loss (tho' often imaginary) of their fortune, credit, acquaintances, and pleasures, that rigour in respect to them is needless. It can tend only to divest the subject of the affection he has for the person of his prince, and of the respect he ought to have for public posts and employments.

As the instability of the great is natural to a despotic government, so their security is interwoven with the nature of monarchy.

So many are the advantages which monarchs gain by clemency; such love, such glory attends it; that it is generally a point of happiness to have an opportunity of exercising it; which in these parts is seldom wanting.

Some branch perhaps of their authority, but never hardly the whole will be disputed: and if they sometimes fight for their crown; they do not fight for their life.

But some may ask, when is it proper to punish, and when to pardon? This is a point that is easier felt than prescribed. When there is danger in the

BOOK
VI.
Chap. 21.

exercise of clemency, the danger is visible; it is an easy matter to distinguish it from that imbecillity which exposes princes to contempt and to the very incapacity of punishing.

(^a) *Evagr.*
hist.

(^b) *Frag.*
of Suidas
in *Con-*
stant. Por-
phyrog.

The emperor Maurice (^a) made a resolution never to spill the blood of his subjects. Anastasius (^b) punished no crimes at all. Isaac Angelus took an oath that no one should be put to death, during his reign. Those Greek emperors had forgot that it was not for nothing they were intrusted with the sword.



B O O K VII.

*Consequences of the different Principles
of the three Governments with respect
to sumptuary Laws, Luxury, and the
Condition of Women.*

C H A P. I.

Of Luxury.

LUXURY is always in proportion to the inequality of fortunes. If the riches of a state are equally divided, there will be no luxury; for it is founded merely on the conveniences acquired by the labour of others.

Book
VII.
Chap. I.

In order to have this equal distribution of riches, the law ought to give to each man only just what is necessary for nature. If they exceed those bounds, some will spend, and others will acquire, and by this means an inequality will be established.

Supposing what is necessary for the support of nature to be equal to a given sum, the luxury of those who have only what is barely necessary, will be equal to a *cypher*; if a person happens to have double that sum, his luxury will be equal to one; he that has double the latter's substance, will have a luxury equal to three; if this be still doubled, there will be a luxury equal to seven; so that the property of the subsequent individual being always supposed double to that of the preceding, the luxury will increase double, and an unit be always added,

Book added, in this progression, 0, 1, 3, 7, 15, 31,
 VII. 63, 127.
 Chap. 1.

In Plato's republic *, luxury might have been exactly calculated. There were four sorts of Census's, or rates of estates. The first was exactly the term beyond poverty, the second was double, the third triple, the fourth quadruple to the first. In the first Census luxury was equal to a *cypher*; in the second to one, in the third to two, in the fourth to three; and thus it followed in an arithmetical proportion.

Considering the luxury of different nations with respect to one another, it is in each state in a compound proportion to the inequality of the subjects fortunes, and to the inequality of the wealth of the different states. In Poland, for example, there is an extreme inequality of fortunes; but the poverty of the whole hinders them from having so much luxury as in a more opulent state.

Luxury is also in proportion to the populousness of the towns, and especially of the capital; so that it is in a compound proportion to the riches of the state, to the inequality of private fortunes, and to the number of people settled in particular places.

In proportion to the populousness of towns, the inhabitants are filled with vain notions, and actuated by an ambition of distinguishing themselves by trifles †. If they are very numerous, and most of them strangers to one another, the passion of dis-

* The first Census was the hereditary share in land, and Plato would not allow them to have in other effects above a triple of the hereditary share. See his *Laws*, book 5.

† In a great city, says the author of the *Fable of the Bees*, tom. 1. p. 123, they dress above their condition, in order to be esteemed more than what they really are by the multitude. This to a weak person is almost as great a pleasure as the accomplishment of his desires.

tinguishing

tinguishing themselves redoubles, because there are greater hopes of success. As luxury inspires these hopes, each man assumes the marks of a superior condition. But by endeavouring thus at distinction, every one becomes equal and distinction ceases; as all of them are desirous of respect, no body is taken notice of.

Hence arises a general inconveniency. Those who excel in a profession set what value they please on their labour; this example is followed by people of inferior abilities; and then there is an end of all proportion between our wants and the means of satisfying them. When I am forced to go to law, I must be able to fee council; when I am sick, I must be able to fee a physician.

It is the opinion of several, that the assembling so great a multitude of people in capital cities, is an obstruction to commerce, because by this means the inhabitants are no longer within a proper distance from each other. But I cannot think so; for men have more desires, more wants, more fancies, when they live together.

C H A P. II.

Of Sumptuary Laws in a Democracy.

WE have observed that in a republic where riches are equally divided, there can be no such thing as luxury; and as this equal distribution constitutes the excellency of a republican government, hence it follows that the less luxury there is in a republic, the more it is perfect. There was none among the old Romans, none among the Lacedæmonians; and in republics where this equality is not quite lost, the spirit of commerce, industry, and

BOOK
VII.
Ch. 2, & 3.

virtue, renders every man able and willing to live on his own property, and consequently prevents the growth of luxury.

The laws concerning the new division of lands insisted upon so eagerly in some republics, were of the most salutary nature. They were dangerous only as they were sudden. By reducing instantaneously the wealth and riches of some, and increasing that of others, they form a revolution in each family, and must produce a general one in the state.

In proportion as luxury gains ground in a republic, the minds of the people are turned towards their particular interests. Those who are allowed only what is necessary, have nothing to wish for but their own and their country's glory. But a soul depraved by luxury has many other desires; and soon becomes an enemy to the laws that confine it. The luxury in which the garrison of *Rhegio* began to live, was the cause of their massacring the inhabitants.

No sooner were the Romans corrupted, than their desires became boundless and immense. Of this we may judge by the price they set on things. A pitcher of Falernian wine ^(d) was sold for a hundred Roman denarii; a barrel of salt meat from the kingdom of Pontus cost four hundred; a good cook four talents; and for boys no price was reckoned too great.

(d) Fragment of the 36th book of Diodorus, quoted by Const. Porphyrogen. in his *extract of virtues and vices*.

When the whole world, impelled by the force of a general corruption, is immersed in voluptuousness ^(e), what must then become of virtue?

(e) Cum maximus omnium impetus ad luxuriam esset, *ibid.*

CHAP. III.

Of Sumptuary Laws in an Aristocracy.

THERE is this inconveniency in an ill constituted aristocracy, that the wealth centers in

in the nobility, and yet, they are not allowed to spend; for as luxury is contrary to the spirit of moderation, it must be banished from thence. This government comprehends therefore only people that are extremely poor, and cannot acquire; and people that are vastly rich, and cannot spend.

BOOK
VII.
Ch. 3. & 4.

In Venice they are compelled by the laws to moderation. They are so habituated to parsimony, that none but courtezans can make them part with their money. Such is the method made use of for the support of industry; the most contemptible of women spend freely their money without danger, whilst those who support them consume their days in the greatest obscurity.

Admirable in this respect were the institutions of the principal republics of Greece. The rich employed their money in festivals, musical chorus's, chariots, horse-races, and chargeable offices. Wealth was therefore as burthensome there as poverty.

C H A P. IV.

Of Sumptuary Laws in a Monarchy.

TACITUS says, ^(s) “*That the Suiones, a* ^{(s) De mo-}
German nation, have a particular respect ^{rib. Ger-}
for riches; for which reason they live under the ^{man.}
government of one person.” This shews that luxury is extremely proper for monarchies, and that under this government there must be no sumptuary laws.

As riches, by the very constitution of monarchies, are unequally divided, there is an absolute necessity for luxury. Were the rich not to spend their money freely, the poor would starve. It is even

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VII.
Chap. 4.

even necessary here that the expences of the rich should be in proportion to the inequality of fortunes; and that luxury, as we have already observed, should increase in this proportion. The augmentation of private wealth is owing to its having deprived one part of the citizens of their necessary support; this must therefore be restored to them.

For the preservation therefore of a monarchical state, luxury ought continually to increase and to grow more extensive, as it rises from the labourer to the artificers, to the merchants, to the magistrates, to the nobility, to the great officers of state, up to the very prince; otherwise the nation will be undone.

(c) Dio.
Cassius
Lib. 54.

In the reign of Augustus, a proposal was made in the Roman senate, which was composed of grave magistrates, learned civilians, and of men whose heads were filled with the notion of the primitive times, to reform the manners and luxury of women. It is curious to see in *Dio*, (c) with what art this prince eluded the importunate solicitations of those senators. This was because he was founding a monarchy, and dissolving a republic.

(d) Tacit.
Annal.
lib. 3.

Under Tiberius the *Ædiles* proposed in the senate the re-establishment of the ancient sumptuary laws (d). This prince, who did not want sense, opposed it. “*The state, said he, could not possibly subsist in the present situation of things. How could Rome, how could the provinces, live? We were frugal while we were inhabitants of a single city; now we consume the riches of the universe, and employ both masters and slaves in our service.*” He plainly saw that sumptuary laws would not suit the present form of government.

When

When a proposal was made under the same emperor to the senate, to prohibit the governors from carrying their wives with them into the provinces, because of the dissoluteness and irregularities which followed those ladies, the proposal was rejected. It was said, *that the examples of ancient austerity had been changed into a more agreeable method of living* ^(h). They found there was a necessity for different manners.

^(h) *Multa
duritie ve-
terum me-
lius & læ-
tius muta-
ta. Tacit.
Annal.
lib. 3.*

Luxury is therefore absolutely necessary in monarchies; and necessary also in despotic states. In the former it is the use people make of what share of liberty they possess; in the other it is the abuse they make of the advantages of their slavery. A slave singled out by his master to tyrannize over the other slaves, uncertain of enjoying to morrow the blessings of to day, has no other felicity than that of glutting the pride, the passions, and voluptuousness of the present moment.

Hence arises a very natural reflexion. Republics end with luxury; monarchies with poverty ⁽ⁱ⁾.

⁽ⁱ⁾ *Opu-
lencia pa-
ritura mox
egestatem.
Florus lib.*

C H A P. V.

*In what cases Sumptuary Laws are useful in a
Monarchy.*

WHETHER it was from a republican spirit or from some other particular circumstances, in the middle of the thirteenth century, sumptuary laws were made in Arragon. James the first ordained that neither the king nor any of his subjects should have above two sorts of dishes at a meal, and that each dish should be dressed
only

Book
VII.
Chap. 5.
(*) Constitution
of James
I. in the
year 1234
article 6,
in Marca
Hispanica
P. 1429.

only one way, except it were game of their own killing (*).

In our days sumptuary laws have been also enacted in Sweden; but with a different view from those of Arragon.

A government may make sumptuary laws with a view to absolute frugality; this is the spirit of sumptuary laws in republics; and the very nature of the thing shews that such was the design of those of Arragon.

Sumptuary laws may likewise be made with a design to promote a relative frugality: when a government perceiving that foreign merchandizes being at too high a price, will require such an exportation of the home manufactures, as to deprive them of more advantages by the loss of the latter, than they can receive from the possession of the former, they will forbid their being introduced. And this is the spirit of the laws that in our days have been passed in Sweden*. Such are the sumptuary laws proper for monarchies.

In general the poorer a state is, the more it is ruined by its relative luxury; and consequently the more occasion it has for relative sumptuary laws. The richer a state is, the more it thrives by its relative luxury; for which reason it must take particular care not to make any relative sumptuary laws. This we shall better explain in the book on commerce (^d); here we treat only of absolute luxury.

(^d) See
book 20.
chap. 20.

* They have prohibited rich wines and other costly merchandizes.

C H A P. VI.

*Of the Luxury of China.*B o o k
VII.
Chap. 6.

SUMPTUARY laws may, in some governments, be necessary for particular reasons. The people, by the influence of the climate, may grow so numerous, and the means of subsisting may be so uncertain, as to render an universal application to agriculture extremely necessary. As luxury in those countries is dangerous, their sumptuary laws should be very severe. In order therefore to be able to judge whether luxury ought to be encouraged or proscribed, we should examine first what relation there is between the number of people and the facility they have of procuring subsistence. In England the soil produces more grain than is necessary for the maintenance of those who cultivate the land, and of those who are employed in the woollen manufactures. This country may be therefore allowed to have some trifling arts, and consequently luxury. In France likewise there is corn enough for the support of the husbandman, and of the manufacturer. Besides, a foreign trade may bring in so many necessities in return for toys, that there is no danger to be apprehended from luxury.

On the contrary, in China the women are so prolific, and the human species multiplies so fast, that the lands, tho' ever so much cultivated, are scarce sufficient to support the inhabitants. Here therefore luxury is pernicious, and the spirit of industry and œconomy is as requisite, as in any republic *. They are obliged to pursue the ne-

* Luxury has been here always prohibited.

Book VII.
Chap. 6, & 7. necessary arts, and to shun those of luxury and pleasure.

This is the spirit of the excellent decrees of the Chinese emperors. "Our ancestors, says an emperor of the family of the Tangs ^(P), held it as a maxim, that if there was a man who did not work, or a woman that was idle, somebody must suffer cold or hunger in the empire." And on this principle he ordered an infinite number of monasteries of Bonzes to be destroyed.

(P) In an ordinance quoted by Father Du Halde, tom. 2. p. 497.

The third emperor of the one and twentieth Dynasty ^(Q), to whom some precious stones were brought that had been found in a mine, ordered it to be shut up, not chusing to fatigue his people with working for a thing that could neither feed nor cloath them.

(Q) History of China, 21st Dynasty in Father Du Halde's work, tom. 1.

(R) In a discourse cited by Father Du Halde, tom. 2. p. 418.

So great is our luxury, says Kiayventi ^(R), that people adorn with embroidery the shoes of boys and girls, whom they are obliged to sell. Is employing so many people in making cloaths for one person, the way to prevent a great many from wanting cloaths? There are ten men who eat the fruits of the earth to one employed in agriculture; and is this the means to preserve numbers from wanting nourishment?

CHAP. VII.

Fatal Consequence of Luxury in China.

IN the history of China we find it has had twenty-two successive Dynasties, that is, it has experienced twenty-two general, without mentioning an infinite number of particular, revolutions. The three first Dynasties lasted a long time, because they were

I

sagely

sagely administered, and the empire had not so great an extent as it afterwards obtained. But we may observe in general that all those Dynasties began very well. Virtue, attention, and vigilance, are necessary in China; these prevailed in the commencement of the Dynasties, and failed in the end. It was natural, that emperors trained up in military toils, who had compassed the dethroning of a family immersed in pleasures, should be steady to virtue, which they had found so advantageous, and afraid of voluptuousness, which they knew had proved so fatal to the family dethroned. But after the three or four first princes, corruption, luxury, indolence, and pleasures, possess their successors; they shut themselves up in a palace; their understanding is impaired; their life is shortened; the family declines; the grandees rise up; the eunuchs gain credit; none but children are set on the throne; the palace is at variance with the empire; a lazy set of fellows that dwell there, ruin the industrious part of the nation; the emperor is killed or destroyed by an usurper, who founds a family, the third or fourth successor of which goes and shuts himself up in the very same palace.

C H A P. VIII.

Of public Continency.

SO many are the imperfections that attend the loss of virtue in women, and so greatly are their minds depraved, when this principal guard is removed, that in a popular state public incontinency may be considered as the last of miseries, and as a

BOOK certain fore-runner of a change in the constitution.
VII.

Ch. 8, & 9.

Hence it is that the sage legislators of republican states have always required of women a particular gravity of manners. They have proscribed not only vice, but the very appearance of it. They have banished even all commerce of gallantry, a commerce that produces idleness, that renders the women corrupters even before they are corrupted, that gives a value to trifles, and debases things of importance; a commerce, in fine, that makes people act intirely by the maxims of ridicule, in which the women are so perfectly skilled.

CHAP. IX.

Of the condition or state of Women in different Governments.

IN monarchies women are subject to very little restraint, because as the distinction of ranks calls them to court, thither they repair in order to assume that spirit of liberty, which is the only one there tolerated. The aspiring courtier avails himself of their charms and passions, in order to advance his fortune: and as their weakness admits not of pride, but of vanity; luxury constantly attends them.

In despotic governments women do not introduce, but are themselves an object of luxury. They must be in a state of the most rigorous servitude. Every one follows the spirit of the government, and adopts in his own family the customs he sees elsewhere established. As the laws are very severe and executed on the spot, they are afraid lest the liberty

of women should expose them to dangers. Their quarrels, indiscretions, repugnances, jealousies, piques, and that art, in fine, which little souls have of interesting great ones, would be attended there with fatal consequences.

Besides, as princes in those countries make a sport of human nature, they allow themselves a multitude of women; and a thousand considerations oblige them to keep them in close confinement.

In republics women are free by the laws, and constrained by manners; luxury is banished from thence, and with it corruption and vice.

In the cities of Greece, where they were not under the restraint of a religion which declares that even amongst men a purity of morals is a part of virtue; where a blind passion triumphed with a boundless insolence, and love appeared only in a shape which we dare not mention, while marriage was considered as nothing more than simple friendship*; such was the virtue, simplicity, and chastity of women in those cities, that in this respect hardly any people were ever known to have had a better and wiser polity†.

C H A P. X.

Of the domestic Tribunal among the Romans.

THE Romans had no particular magistrates, like the Greeks, to inspect the conduct of

* In respect to true love, says Plutarch, the women have nothing to say to it; in his treatise of love, p. 600. He spoke in the stile of his time. See Xenophon in the dialogue intitled *Hiero*.

† At Athens there was a particular magistrate who inspected the conduct of women.

women. The censors had not an eye over them but as over the rest of the republic. The institution of the domestic tribunal § supplied the magistracy established among the Greeks ||.

The husband summoned the wife's relations, and tried her in their presence *. This tribunal preserved the morals of the republic; and at the same time these very morals maintained this tribunal. For it decided not only in respect to the violation of the laws, but also of morals; now in order to judge of the violation of morals, morals are requisite.

The penalties inflicted by this tribunal, ought to be, and actually were, arbitrary: for all that relates to manners, and to the rules of modesty, can hardly be comprized under one code of laws. It is easy indeed to regulate by laws what we owe to others; but it is very difficult to comprize all we owe to ourselves.

The domestic tribunal inspected the general conduct of women: but there was one crime, which beside the animadversion of this tribunal, was likewise subject to a public accusation. This was adultery; whether that in a republic so great a violation of morals interested the government; or whether the wife's immorality might render the husband's

§ Romulus instituted this tribunal, as appears from Dionysius Halicarnass. book 2. p. 56.

|| See in Livy, book 39, the use that was made of this Tribunal at the time of the conspiracy of the Bacchanalians: they gave the name of conspiracy against the republic to assemblies in which the morals of women and young people were debauched,

* It appears from *Dionys. Halicarn.* lib. 2. that Romulus's institution was, that in ordinary cases the husband should sit as judge in presence of the wife's relations, but that in grievous crimes he should determine in conjunction with five of them. Hence *Ulpian* tit. 6. § 9, 12, & 13, distinguishes in respect to the different judgments of manners, between those which he calls important, and those which are less so, *graviorēs, leviores.*

suspected;

suspected ; or whether, in fine, they were afraid lest even honest people might chuse that this crime should rather be concealed, than punished.

BOOK
VII.
Chap. II.

C H A P. XI.

*In what manner the Institutions changed at Rome,
together with the Government.*

AS morals were supposed by the domestic tribunal, they were also supposed by the public accusation ; and hence it is that these two things fell together with the public morals, and ended with the republic †.

The establishing of perpetual questions, that is, the division of jurisdiction among the prætors, and the custom gradually introduced of the prætors judging all affairs themselves *, weakened the use of the domestic tribunal. This appears by the surprize of historians, who look upon the decisions which Tiberius caused to be given by this tribunal, as singular facts and as a renewal of the ancient course of pleading.

The establishment of monarchy and the change of manners put likewise an end to public accusations. It might be apprehended lest a dishonest man, affronted at the contempt shewn him by a woman, vexed at her refusals, and irritated even by her virtues, should form a design to destroy her. The *Julian* law ordained that a woman should not be accused of adultery till after her husband had been

† *Judicio de moribus (quod antea quidem in antiquis legibus positum erat, non autem frequentabatur) penitus abolito, leg. 11. Cod. de repud.*

* *Judicia extraordinaria.*

THE SPIRIT

charged with favouring her irregularities ; which limited greatly and annihilated, as it were, this sort of accusation †.

Sixtus Quintus seemed to have been desirous of reviving the public accusation ‖. But there needs very little reflection to see, that this law would be more improper in such a monarchy as his, than in any other.

C H A P. XII.

Of the Guardianship of Women among the Romans.

THE Roman laws subjected women to a perpetual guardianship, except they were under cover and the authority of a husband †‖. This guardianship was given to the nearest of the male relations ; and by a vulgar expression * it appears they were very much confined. This was proper for a republic, but not at all necessary in a monarchy §.

That the women among the ancient Germans were likewise under a perpetual tutelage, appears from the different codes of the laws of the Barbarians *§. This custom was communicated to the monarchies founded by those people ; but was not of a long duration.

† It was entirely abolished by Constantine : “ It is a shame, *said he*, that settled marriages should be disturbed by the presumption of strangers.

‖ Sixtus Quintus ordained, that if a husband did not come and make his complaints to him of his wife’s infidelity, he should be put to death. See *Leti*.

†‖ *Nisi convenissent in manum viri.*

* *Ne sis mihi patruus oro.*

§ The Papian law ordained under Augustus that women who had bore three children should be exempt from this tutelage.

*§ This tutelage was by the Germans called *Mundeburdium*.

C H A P.

C H A P. XIII.

Of the punishments decreed by Emperors against the Incontinency of Women.

THE *Julian* law ordained a punishment against adultery. But so far was this law, any more than those afterwards made on the same account, from being a mark of purity of morals, that on the contrary they were a proof of their depravation. BOOK
VII.
Chap. 13.

The whole political system in respect to women received a change in the monarchical state. The question was no longer to oblige them to a purity of morals, but to punish their crimes. That new laws were made to punish their crimes, was owing to their leaving those transgressions unpunished, which were not of so criminal a nature.

The frightful dissolution of manners obliged indeed the emperors to enact laws in order to put some stop to lewdness; but it was not their intention to establish a general reformation. Of this the positive facts related by historians are a much stronger proof, than all these laws can be of the contrary. We may see in *Dio* the conduct of Augustus on this occasion, and in what manner he eluded, both in his prætor's and in his censor's office, the repeated instances that were made him, for that purpose.

We

|| Upon their bringing before him a young man who had married a woman with whom he had before carried on an illicit commerce, he hesitated a long while, not daring to approve nor to punish these things. At length recollecting himself, *seditions*, says he, *have been the cause of very great evils, let us forget them.* *Dio* book 54. The senate having desired him to give them some regulations in respect to women's morals, he evaded their

THE SPIRIT

We find indeed in historians very rigid sentences, passed in the reigns of Augustus and Tiberius against the lewdness of some Roman ladies : but by shewing us the spirit of these reigns, they at the same time shew us the spirit of those decisions.

The principal design of Augustus and Tiberius was to punish the dissoluteness of their relations. It was not their immorality they punished, but a particular crime of impiety or high treason * of their own invention, which served to promote a respect for majesty, and answered their private revenge.

The penalty of the *Julian* law was small †. The emperors insisted that in passing sentence the judges should increase the penalty of the law. This was the subject of the invectives of historians. They did not examine whether the women were deserving of punishment, but whether they had violated the law, in order to punish them.

One of the most tyrannical proceedings of Tiberius §, was the abuse he made of the ancient laws. When he wanted to extend the punishment of a Roman lady beyond that inflicted by the *Julian* law, he revived the domestic tribunal ¶*.

These
their petition, by telling them that they should chastise their wives, in the same manner as he did his ; upon which they desired him to tell them how he behaved to his wife. (I think a very indiscreet question).

* Culpam inter viros & fœminas vulgatam gravi nomine læsarum religionum appellando, clementiam majorum suasque ipse leges egrediebatur, *Tacit. Annal. lib. 3.*

† This law is given in the Digest ; but without mentioning the penalty. It is supposed it was only *relegatio*, because that of incest was only *deportatio*. Leg. *si quis viduam*, ff. de quæst.

§ Proprium id Tiberio fuit scelera nuper reperta priscis verbis obtegere, *Tacit.*

¶* Adukerii graviolem pœnam deprecatus, ut exemplo majorum propinquis suis ultra ducentefimum lapidem removeretur, a suis.

These regulations in respect to women concerned only senatorian families, but not the common people. Pretences were wanted to accuse the great, which were constantly furnished by the dissolute behaviour of the ladies.

Book
VII.
Chap. 13,
& 14.

In fine, what I have above observed, namely that purity of morals is not the principle of monarchy, was never better verified than under those first emperors; and whoever doubts of it need only read Tacitus, Suetonius, Juvenal, or Martial.

C H A P. XIV.

Sumptuary Laws among the Romans.

WE have spoken of public incontinency, because it always accompanies, always follows, and is followed always by luxury. If we leave the motions of the heart at liberty, how shall we be able to restrain the weaknesses of the mind?

At Rome, besides the general institutions, the censors prevailed on the magistrates to enact several particular laws to preserve the frugality of women. This was the design of the Fannian, Licinian, and Oppian laws. We may see in *Livy* ^(x) the great ferment the senate was in, when the women insisted upon the revocation of the Oppian law. The abrogation of this law is fixed upon by Valerius Maximus as the period from whence we may date the luxury of the Romans.

^(x) Decad.
IV. lib. 4.

suasit. Adultero Manlio Italiâ atque Africâ interdictum est. Tacit. Annal. lib. 2.

Of Dowries and Nuptial Advantages in different Constitutions.

BOOK
VII.
Chap. 15.

DOWRIES ought to be considerable in monarchies in order to enable husbands to support their rank and the established luxury. In republics, where luxury should never reign †, they ought to be moderate; but there should hardly be any at all in despotic governments, where women are in some measure slaves.

The community introduced by the French laws between man and wife, is extremely well adapted to a monarchical government; because the women are thereby interested in domestic affairs, and compelled, as it were, to take care of their family. It is less so in a republic, where women have more virtue. But it would be quite absurd in despotic governments, where the women themselves generally constitute a part of the master's property.

As women are in a state that furnishes sufficient inducements to marriage, the advantages which the law gives them over the husband's property, are of no service to society. But in a republic they would be extremely prejudicial, because riches are productive of luxury. In despotic governments the profit accruing from marriage ought to be mere subsistence, and no more.

† Marseilles was the wisest of all the republics in its time; here it was ordained that dowries should not exceed one hundred crowns in money, and five in cloaths, as Strabo observes, lib. 4.

CHAP. XVI.

An excellent Custom of the Samnites.

THE Samnites had a custom which in so small a republic, and especially in their situation, must have produced admirable effects. The young people were all convened in one place, and their conduct was examined. He that was declared the best of the whole assembly, had leave given him to take which girl he pleased for his wife; the person that had been declared second best chose after him; and so on (^c). Admirable institution! The only re-commendation that young men could have on this occasion, was owing to virtue and to the services done their country. He who had the greatest share of these endowments, chose which girl he liked out of the whole nation. Love, beauty, chastity, virtue, birth, and even wealth itself, were all, in some measure, the dowry of virtue. A nobler, and grander recompence, less chargeable to a petty state, and more capable of influencing both sexes, could scarce be imagined.

BOOK
VII.
Chap. 16.

(^c) Fragment of Nicolaus Damasce-nus, taken from Stobeus in the collection of Constantine Porphyrogenitus.

The Samnites were descended from the Lacedæmonians: and Plato, whose institutes are only an improvement of those of Lycurgus, enacted very near the same law *.

* He even permits them to have a more frequent interview with one another.

BOOK
VII.
Chap. 17.

IT is contrary to reason and nature that women should reign in families, as was customary among the Ægyptians; but not that they should govern an empire. In the first case the state of their natural weakness does not permit them to have the pre-eminence; in the second their very weakness generally gives them more lenity and moderation, qualifications fitter for a good administration, than roughness and severity.

(^m) Edify-
ing Let-
ters, 14th
collection.

In the Indies they are very easy under a female government; and it is settled that if the male issue be not of a mother of the same blood, the females born of a mother of the blood-royal must succeed (^k). And then they have a certain number of persons that assist them to bear the weight of the government. If to this we add the example of England and Russia, we shall find that they succeed alike both in moderate and despotic governments.



B O O K VIII.

*Of the Corruption of the Principles of
the three Governments.*

C H A P. I.

General Idea of this Book.

THE corruption of each government generally begins with that of the principles.

Book
VIII.
Chap. I.

C H A P. II.

Of the Corruption of the Principle of Democracy.

THE principle of democracy is corrupted, not only when the spirit of equality is extinct, but likewise when they fall into a spirit of extreme equality, and when every citizen wants to be upon a level with those he has chosen to command him. Then the people, incapable of bearing the very power they have intrusted, want to do every thing of themselves, to debate for the senate, to execute for the magistrate, and to strip the judges.

When this is the case, virtue can no longer subsist in the republic. The people want to exercise the functions of the magistrates; who cease to be revered. The deliberations of the senate are slighted; all respect is then laid aside for the senators, and consequently for old age. If there is no more respect for old

BOOK
VIII.
Chap. 2.

old age, there will be none soon for parents ; deference to husbands will be likewise thrown off, and submission to masters. This licentiousness will soon taint the mind ; and the restraint of command be as fatiguing as that of obedience. Wives, children, slaves, will shake off all subjection. No longer will there be any such thing as manners, order, or virtue.

We find in *Xenophon's banquet* a very lively description of a republic in which the people abused their equality. Each guest gives in his turn the reason why he is satisfied. "*Content I am with myself, says Chamides, because of my poverty. When I was rich, I was obliged to pay my court to informers, knowing I was more liable to be hurt by them, than capable of doing them harm. The republic constantly demanded some new sum of me ; and I could not decline paying. Since I am grown poor, I have acquired authority ; no body threatens me, I rather threaten others. I can go or stay where I please. The rich already rise from their seats and give me the way. I am a king, I was before a slave : I paid taxes to the republic, now it maintains me : I am no longer afraid of losing ; I hope to acquire.*"

The people fall into this misfortune, when those in whom they confide, desirous of concealing their own corruption, endeavour to corrupt. To prevent them from seeing their own ambition, they speak to them only of their grandeur ; to conceal their own avarice, they incessantly flatter theirs.

The corruption will increase among the corrupters, and likewise among those who are already corrupted.

rupted. The people will distribute the public money among themselves, and having added the administration of affairs to their indolence, they will be for adding to their poverty the amusements of luxury. But with their indolence and luxury, nothing but the public treasure will be able to satisfy their demands.

We must not be surprised to see their suffrages given for money. It is impossible to give a great deal to the people without squeezing much more out of them: and to compass this, the state must be subverted. The greater the advantages they seem to derive from their liberty, the nearer they draw to the critical moment of losing it. Petty tyrants arise, who have all the vices of a single tyrant. The small remains of liberty soon become unsupportable; a single tyrant starts up, and the people lose all, even the advantages of their corruption.

Democracy hath therefore two excesses to avoid, the spirit of inequality which leads to aristocracy or monarchy; and the spirit of extreme equality, which leads to despotic power, as the latter is completed by conquest.

True it is that those who corrupted the Greek republics, did not become tyrants. This was because they had a greater passion for eloquence than for the military art. Besides there reigned an implacable hatred in the hearts of the Greeks against those who subverted a republican government; and for this reason anarchy degenerated into annihilation, instead of being changed into tyranny.

But Syracuse, which was situated in the midst of a great number of petty states whose government

BOOK
VIII.
Chap. 3.
(^c) See Plu-
tarch in
the lives
of Timo-
leon and
Dio.

had been changed from oligarchy to tyranny (^c); Syracuse which had a senate * scarce ever mentioned in history, was exposed to such miseries as are the consequences of a more than ordinary corruption. This city continually in a state of licentiousness † or oppression, equally labouring under its liberty and servitude, receiving always the one and the other like a tempest, and notwithstanding its external strength constantly determined to a revolution by the least foreign power: This city, I say, had in its bosom an immense multitude of people, whose fate it was to have always this cruel alternative, of either giving themselves a tyrant, or of being the tyrant themselves.

CHAP. III.

Of the Spirit of extreme Equality.

AS distant as heaven is from earth, so is the true spirit of equality from that of extreme equality. The former does not consist in managing so that every body should command, or that no one should be commanded; but in obeying and commanding our equals. It endeavours not to be without a master, but that its masters should be none but its equals.

✓ In the state of nature indeed, all men are born equal; but they cannot continue in this equality.

* It was that of the six hundred, of whom mention is made by Diodorus.

† Upon the expulsion of the tyrants, they made citizens of strangers and mercenary troops, which produced civil wars, *Aristot. Polit. lib. 5. cap. 3.* the people having been the cause of the victory over the Athenians, the republic was changed, *ibid. cap. 4.* The passion of two young magistrates, one of whom carried off the other's boy, and in revenge the other debauched his wife, was attended with a change in the form of this republic. *ibid. lib. 7. cap. 4.*

Society makes them lose it, and they recover it only by means of the laws.

BOOK
Ch. 4. & 5.
VIII.

Such is the difference between a well regulated democracy, and one that is not so, that in the former men are equal only as citizens, but in the latter they are equal also as magistrates, as senators, as judges, as fathers, as husbands, or as masters.

The natural place of virtue is near to liberty; but it is not nearer to extreme liberty than to servitude.

CHAP. IV.

Particular Cause of the Corruption of the People.

GREAT success, especially when chiefly owing to the people, swells them so high with pride, that it is impossible to manage them. Jealous of their magistrates they soon become jealous likewise of the magistracy; enemies to those that govern, they soon prove enemies also to the constitution. Thus it was the victory over the Persians obtained in the streights of Salamis that corrupted the republic of Athens^(d); and thus the defeat of the Athenians ruined the republic of Syracuse^(e).

^(d) Aristot.
Polit. lib.
5. cap. 4.
^(e) Ibid.

Marseilles never experienced those great transitions from lowness to grandeur: this was owing to the prudent conduct of this republic, which always preserved her principles.

CHAP. V.

Of the Corruption of the Principle of Aristocracy.

ARISTOCRACY is corrupted if the power of the nobles becomes arbitrary:

M 2

when

when this is the case there can no longer be any virtue either in the governours, or the governed.

If the reigning families observe the laws, it is a monarchy with several monarchs, and in its own nature one of the most excellent; for almost all these monarchs are tied down by the laws. But when they do not observe them, it is a despotic state governed by a great many despotic princes.

In this last case the republic consists only in the nobles. The body governing is the republic; and the body governed is the despotic state; which forms two of the most heterogeneous and divided bodies in the world.

The extremity of corruption is when the power of the nobles becomes hereditary*; for then they can hardly have any moderation. If they are few in number, their power is greater, but their security less; if they are a larger number, their power is less, and their security greater: insomuch that power goes on increasing, and security diminishing, up to the very despotic prince whose head is encircled with excess of power and danger.

The great number therefore of nobles in an hereditary aristocracy renders the government less violent: but as there is less virtue, they fall into a spirit of supineness and negligence, by which means the state loses all its strength and activity†.

An aristocracy may maintain the full vigor of its constitution, if the laws be such as are apt to render the nobles more sensible of the perils and fatigues, than of the pleasure of command; and if

* The aristocracy is changed into an oligarchy.

† Venice is one of those republics that has best corrected by its laws the inconveniencies of hereditary aristocracy.

the government is in such a situation as to have something to dread, while security shelters under its protection, and uncertainty threatens from abroad.

As a certain kind of confidence forms the glory and stability of monarchies, republics on the contrary must have something to apprehend†. A fear of the Persians supported the laws of Greece. Carthage and Rome were alarmed, and strengthened by each other. Strange, that the greater security those states enjoyed, the more like stagnated waters, they were subject to corruption!

CHAP. VI.

Of the Corruption of the Principle of monarchy.

AS democracies are destroyed when the people despoil the senate, the magistrates, and judges of their functions; so monarchies are corrupted when the prince insensibly deprives societies or cities of their privileges. In the first case the multitude usurp a despotic power; in the second it is usurped by a single person.

“*The destruction of the Dynasties of Tsin and Soui,*” SAYS A CHINESE AUTHOR, “*was owing to this: the princes instead of confining themselves like their ancestors to a general inspection, the only one worthy of a sovereign, wanted to govern every thing immediately by themselves* (f).”

The Chinese author gives us here the cause of the corruption of almost all monarchies.

(f) Com-
pilement
of works
made un-
der the

† Justin attributes the extinction of Athenian virtue to the death of Epaminondas. Having no further emulation, they lated by spent their revenues in feasts, *frequentius carnem, quam castra* father *visentes*. Then it was that the Macedonians emerged out of DaHalde. obscurity. l. 6.

THE SPIRIT

Monarchy is destroyed, when a prince thinks he shews a greater exertion of power in changing, than in conforming to, the order of things; when he deprives some of his subjects of their hereditary employments to bestow them arbitrarily upon others; and when he is fonder of being guided by fancy than judgment.

Monarchy is destroyed, when the prince directing every thing entirely to himself, calls the state to his capital, the capital to his court, and the court to his own person.

Monarchy is destroyed in fine, when the prince mistakes his authority, his situation, and the love of his people; and when he is not fully persuaded that a monarch ought to think himself secure, as a despotic prince ought to think himself in danger.

CHAP. VII.

The same Subject continued.

THE principle of monarchy is corrupted, when the first dignities are marks of the first servitude, when the great men are stripped of popular respect, and rendered the low tools of arbitrary power.

It is still more corrupted, when honor is set up in contradiction to honors, and when men are capable of being loaded at the very same time with infamy * and with dignities,

It

* Under the reign of Tiberius statues were erected to, and triumphal ornaments conferred on, informers; which debased these honors to such a degree, that those who had really merited them disdained to accept of them. *Fragm. of Dio, book 58.* taken from the extract of virtues and vices, by Constantine Porphyrog.

See

It is corrupted when the prince changes his justice into severity; when he puts like the Roman emperors a Medusa's head on his breast †; and when he assumes that menacing and terrible air which Commodus ordered to be given to his statues (g).

(g) Herodian.

Again it is corrupted, when mean and abject souls grow vain of the pomp attending their servitude; and imagine that the motive which induces them to be entirely devoted to their prince, exempts them from all duty to their country.

But if it be true, (and indeed the experience of all ages has shewn it) that in proportion as the power of the monarch becomes boundless and immense, his security diminishes; is the corrupting this power, and the altering its very nature, a less crime than that of high treason against the prince?

C H A P. VIII.

Danger of the Corruption of the Principle of monarchical Government.

TH E danger is not when the state passes from one moderate to another moderate government, as from a republic to a monarchy, or from a monarchy to a republic; but when it precipitates from a moderate to a despotic government.

Most of the European nations are still governed by principles of morality. But if by a long abuse

See in Tacitus in what manner *Nero* on the discovery and punishment of a pretended conspiracy, bestowed triumphal ornaments on Petronius Turpilianus, Nerva, and Tigellinus. *Annal. book 14.* See likewise how the generals refused to serve, because they contemned the military honors, *pervulgatis triumphis insignibus*, Tacit. *Annal. book 13.*

† In this state the prince knew extremely well the principle of his government.

of power, or the fury of conquest, despotic sway should prevail to a certain degree; neither morals nor climate would be able to withstand its baleful influence: and then human nature would be exposed, for some time at least, even in this beautiful part of the world, to the insults with which she has been abused in the other three.

CHAP. IX.

How ready the Nobility are to defend the throne.

THE English nobility buried themselves with Charles the first, under the ruins of the throne; and before that time, when Philip the second endeavoured to tempt the French with the allurements of liberty, the crown was constantly supported by a nobility who think it an honor to obey a king, but consider it as the lowest infamy to share the power with the people.

The house of Austria has used her constant endeavours to oppress the Hungarian nobility; little thinking how serviceable that very nobility would be one day to her. She wanted money from their country which it had not; but took no notice of the men with which it abounded. When a multitude of princes fell to a dismembering of her dominions, the several pieces of her monarchy fell motionless, as it were, one upon the other. No life was then to be seen but in that very nobility, who resenting the injuries done to their sovereign, and forgetting those done to themselves, took up arms to avenge her cause, and considered it as the highest glory bravely to die and to forgive,

CHAP.

C H A P. X.

Of the Corruption of the Principle of despotic Government.

THE principle of despotic government is subject to a continual corruption, because it is even in its nature corrupt. Other governments are destroyed by particular accidents which do violence to the principles of each constitution; this is ruined by its own intrinsic imperfection, when no accidental causes impede or corrupt the principles on which it is founded. It maintains itself therefore only when circumstances drawn from the climate, religion, situation, or genius of the people, oblige it to follow some order, and to admit of some rule. By these things its nature is forced without being changed: its ferocity remains; and it is made tame and tractable only for a time.

BOOK
VIII.
Chap. 10,
& 11.

C H A P. XI.

Natural Effects of the Goodness and Corruption of the Principles of Government.

WHEN once the principles of government are corrupted, the very best laws become bad and turn against the state: but when the principles are sound, even bad laws have the same effect as good; the force of the principle draws every thing to it.

The inhabitants of Crete used a very singular method, to keep the principal magistrates dependent on the laws; which was that of *Insurrection*. Part of the citizens rose up in arms ^(b), put the magistrates to flight,

(b) Aristot.
Polit.
book 2.
chap. 10.

BOOK
VIII.
Chap. II.

flight, and obliged them to return to a private life. This was supposed to be done in consequence of the law. One would have imagined that an institution of this nature, which established sedition in order to hinder the abuse of power, would have subverted any republic whatsoever ; and yet it did not subvert that of Crete. The reason is this *.

When the ancients wanted to express a people that had the strongest love for their country, they always mentioned the inhabitants of Crete: *Our*

(i) Repub. country, said Plato (i), *a name so dear to the Cretans.*
lib. 9. They called it by a name which signifies the love of

(k) Plu- a mother for her children (k). Now the love of
tarch's our country sets every thing right.
morals,

treatise The laws of Poland have likewise their *Insur-*
whether a rection: But the inconveniences thence arising plainly
man ad- shew that the people of Crete alone were capable of
vanced in employing such a remedy with success.
yearsought

to meddle The gymnastic exercises established amongst the
with pub- Greeks, had the same dependance on the goodness
lic affairs. of the principle of government. “ *It was the La-*

(l) Repub. “ *cedæmonians and Cretans, said Plato (l), that opened*
lib. 5. “ *those celebrated academies which gave them so*

“ *eminent a rank in the world. Modesty at first*

“ *was alarmed; but it yielded to the public uti-*

“ *lity.*” In Plato’s time these institutions were ad-

mirable † ; as they had a relation to a very important
object,

* They always united immediately against foreign enemies, which was called *Syncretism*. Plut. Mor. p. 88.

† The Gymnastic art was divided into two parts, dancing and *wrestling*. In Crete they had the armed dances of the Curetes ; at Sparta they had those of Castor and Pollux ; at Athens the armed dances of Pallas, which were extremely proper for those that were not yet of age for military service. Wrestling is the image of war, said Plato, *of laws book 7*. He commends an-
tiquity

object, which was the military art. But when virtue fled from Greece, the military art was destroyed by these institutions; people appeared then on the arena, not for improvement, but for debauch.

BOOK
VIII.
Chap. 12:

Plutarch informs us ^(m) that the Romans in his time were of opinion that those games had been the principal cause of the slavery into which the Greeks were fallen. On the contrary, it was the slavery of the Greeks that had corrupted these exercises. In Plutarch's time ⁽ⁿ⁾, their fighting naked in the parks, and their wrestling, infected the young people with the spirit of cowardice, inclined them to infamous passions, and made them mere dancers. But in Epaminondas's time the exercise of wrestling made the Thebans win the famous battle of Leuctra ^(o).

^(m) Plutarch's morals, in the treatise entitled *Questions concerning the affairs of the Romans.*

⁽ⁿ⁾ Ibid.

There are very few laws which are not good, while the state retains its principles: here I may apply what Epicurus said of riches; *it is not the liquor, but the vessel, that is corrupted.* ✕

^(o) Plutarch's morals, *Table propositions*, book 2. ✓

C H A P. XII.

The same Subject continued.

IN Rome the judges were chosen at first from the order of senators. This privilege the Gracchi transferred to the knights: Drusus gave it to the senators and knights; Sylla to the senators only; Cotta to the senators, knights, and public treasurers; Cæsar excluded the latter; Antony made decuries of senators, knights, and centurions.

tiquity for having established only two dances, the pacific and the Pyrrhic. See how the latter dance was applied to the military art, *Plato ibid.*

When

✕ "*Sinceram est nisi vas
quodcumque infundis auget.*"
Hæc En. J. B. K. l. 54

When once a republic is corrupted, there is no possibility of remedying any of the rising evils, but by removing the corruption and restoring its lost principles: every other correction is either useless or a new evil. While Rome preserved its principles intire, the power of judging might without any abuse be lodged in the hands of senators: but as soon as this city was corrupted, let the judicial authority be transferred to whatsoever body, whether to the senate, to the knights, to the treasurers, to two of these bodies, to all three together, or to any other; matters still went always wrong. The knights had no more virtue than the senate, the treasurers no more than the knights, and these as little as the centurions.

When the people of Rome had obtained the privilege of sharing the magistracy with the Patricians, it was natural to think that their flatterers would immediately become arbiters of the government. But no such thing ever happened.—It was observable that the very people who had rendered the plebeians capable of public offices, constantly fixed their choice upon the Patricians. Because they were virtuous, they were magnanimous; and because they were free, they had a contempt of power. But when their morals were corrupted, the more power they were possessed of, the less prudent was their conduct; till at length upon becoming their own tyrants and slaves, they lost the strength of liberty to fall into the weakness and impotency of licentiousness.

C H A P. XIII.

The Effect of an Oath among a virtuous People.

TH E R E is no nation, says Livy ^(p), that ^{Book VIII.} has been longer uncorrupted than the Ro- ^{Chap. 13.} mans ; no nation where moderation and poverty ^(p) ^{Book 1.} have been longer respected.

Such was the influence of an *Oath* among these people, that nothing bound them stronger to the laws. They often did more for the observance of an oath, than they would ever have done for the thirst of glory or for the love of their country.

When Quintius Cincinnatus the Consul wanted to raise an army in the city against the *Æqui* and the *Volsci*, the tribunes opposed him. “ Well, said he, let all those who have taken an oath to the Consul of the preceding year, march under my banners ^(q). ” In vain did the tribunes cry out that ^(q) Livy ^{Book 3.} this oath was no longer binding ; and that when they made it, Quintius was but a private person. The people were more religious than those who pretended to direct them ; they would not listen to the distinctions or equivocations of the tribunes.

When the same people thought of retiring to the *Sacred Mount*, they felt an inward check from the oath they had taken to the Consuls, that they would follow them into the field ^(r). They entered ^(r) Ibid. ^{Book 3.} then into a design of killing the Consuls ; but dropped it, when they were given to understand that their oath would still be binding. Now it is easy to judge of the notion they entertained of the violation of an oath, by the crime they intended to commit.

After

THE SPIRIT

After the battle of Cannæ, the people were seized with such a panic, that they wanted to retire to Sicily. But Scipio having prevailed upon them to swear they would not stir from Rome; the fear of violating this oath surpassed all other apprehensions. Rome was a ship held by two anchors, religion and morality, in the midst of a furious tempest.

C H A P. XIV.

How the smallest Change in the Constitution is attended with the Ruin of its Principles.

ARISTOTLE mentions the city of Carthage as a well regulated republic. Polybius tells us *, that there was this inconveniency at Carthage in the second Punic war, that the senate had lost almost all their authority. We are informed by Livy that when Hannibal returned to Carthage, he found that the magistrates and the principal citizens had abused their power, and converted the public revenues to their own emolument. The virtue therefore of the magistrates, and the authority of the senate both fell at the same time; and all was owing to the same cause.

(^f) See
Book 11th
chap. 12th

Every one knows the wonderful effects of the censorship among the Romans. There was a time when it grew burthensome; but still it was supported, because there was more luxury than corruption. Claudius (^f) weakened its authority, and by this means the corruption became greater than the luxury, and the censorship dwindled away of itself †.

* About a hundred years after.

† The tribunes hindered them from making the census, and opposed their election. See Cicero to Atticus, Book 4th, Letter 10 and 15.

C H A P.

C H A P. XV.

Sure Methods of preserving the three Principles.

I Shall not be able to make myself rightly understood, till the reader has perused the four following chapters.

Book
VIII.
Chap. 15,
& 16.

C H A P. XVI.

Distinctive Properties of a Republic.

IT is natural to a republic to have only a small territory ; otherwise it cannot long subsist. In a large republic there are men of large fortunes, and consequently of less moderation ; there are trusts too great to be placed in any single subject ; he has interests of his own ; he soon begins to think that he may be happy, great, and glorious, by oppressing his fellow citizens ; and that he may raise himself to grandeur on the ruins of his country.

In a large republic the public good is sacrificed to a thousand views ; it is subordinate to exceptions ; and depends on accidents. In a small one, the interest of the public is easier perceived, better understood, and more within the reach of every citizen ; abuses have a less extent, and of course are less protected.

The long duration of the republic of Sparta was owing to its having always continued in the same extent of territory after all its wars. The sole aim of Sparta was liberty ; and the sole advantage of its liberty, glory.

It

THE SPIRIT

It was the spirit of the Greek republics to be as contented with their territories, as with their laws. Athens was first fired with ambition and gave it to Lacedæmon; but it was an ambition rather of commanding a free people, than of governing slaves; rather of directing than of breaking the union. All was lost upon the starting up of monarchy, a government whose spirit is more turned to increase and advancement.

Excepting particular circumstances *, it is difficult for any other than a republican government to subsist long in a single town. A prince of so petty a state would naturally endeavour to oppress his subjects, because his power would be great, while the means of enjoying it or of causing it to be respected, would be very inconsiderable. The consequence is, he would trample upon his people. On the other hand, such a prince might be easily crushed by a foreign or even by a domestic force; the people might every instant unite and rise up against him. Now as soon as a prince of a single town is expelled, the quarrel is over; but if he has many towns, it only begins.

C H A P. XVII.

Distinctive Properties of a Monarchy.

A MONARCHICAL state ought to be of a moderate extent. Were it small, it would form itself into a republic: were it very large, the nobility, possessed of great estates, far from

* As when a petty sovereign supports himself betwixt two great powers by means of their mutual jealousy; but then he has only a precarious existence.

the inspection of the prince, with a private court of their own, and secure moreover from sudden executions by the laws and manners of the country, such a nobility, I say, might throw off their allegiance, having nothing to fear from too slow and too distant a punishment.

Thus Charlemain had scarce founded his empire when he was obliged to divide it; whether the governors of the provinces refused to obey; or whether in order to keep them more under subjection there was a necessity of parcelling the empire into several kingdoms.

After the decease of Alexander his empire was divided. How was it possible for those Greek and Macedonian chiefs, who were each of them free and independent, or commanders at least of the victorious bands dispersed throughout that vast extent of conquered land, how was it possible, I say, for them to obey?

Attila's empire was dissolved soon after his death; such a number of kings, who were no longer under restraint, could not resume their fetters.

The sudden establishment of unlimited power is a remedy, which in those cases may prevent a dissolution: but how dreadful the remedy, that after the enlargement of dominion, opens a new scene of misery!

The rivers hasten to mingle their waters with the sea; and monarchies lose themselves in despotic power.

C H A P. XVIII.

Particular case of the Spanish Monarchy.

LET not the example of Spain be produced against me; it rather proves what I affirm.

BOOK
VIII.
Chap. 19.
& 20.

To preserve America she did what even despotic power itself does not attempt, she destroyed the inhabitants. To preserve her colony, she was obliged to keep it dependent even for its subsistence.

In the Netherlands she essayed to render her self arbitrary; and as soon as she abandoned the attempt, her perplexity increased. On the one hand the Walloons would not be governed by Spaniards, and on the other the Spanish soldiers refused to submit

(^c) See the to Walloon officers (^c).

history of
the Unit-
ed Pro-
vinces, by
Monf. Le
Clerc.

In Italy she maintained her ground, merely by exhausting herself and by enriching that country. For those who would have been glad to have got rid of the king of Spain, were not in a humour to refuse his gold.

C H A P. XIX.

Distinctive Properties of a despotic Government.

A Large empire supposes a despotic authority in the person that governs. It is necessary that the quickness of the prince's resolutions should supply the distance of the places they are sent to; that fear should prevent the carelessness of the remote governor or magistrate; that the law should be derived from a single person, and should change continually according to the accidents which incessantly multiply in a state in proportion to its extent.

C H A P. XX.

Consequence of the preceding Chapters.

IF it be therefore the natural property of small states to be governed as a republic, of middling ones to be subject to a monarch, and of large empires to be swayed by a despotic prince; the consequence

sequence is, that in order to preserve the principles of the established government, the state must be supported in the extent it has acquired, and that the spirit of this state will change in proportion as it contracts or extends its limits.

C H A P. XXI.

Of the Empire of China.

BEFORE I finish this book, I shall answer an objection that may be made to what has been here advanced.

Our missionaries tell us that the vast empire of China has an admirable government, in which there is a proper mixture of fear, honor, and virtue. Consequently I must have given an idle distinction, in establishing the principles of the three governments.

But I cannot conceive what this honor can be among people that will not do the least thing without blows*.

Again, our mercantile people are far from giving us any idea of that virtue so much talked of by the missionaries; we need only consult them in relation to the robberies and extortions of the Mandarines^(e).

(e) Among others, *De Lange's* relation.

Besides, Father *Parennin's* letters concerning the emperor's proceedings against some new-converted princes of the blood^(f) who had incurred his displeasure, plainly shew us a continued plan of tyranny, and inhuman injuries committed by rule, that is in cool blood.

(f) Of the Family of Sournia-ma, Edifying Letters, 18th collection.

We have likewise Monsieur *de Mairan's*, and the same father *Parennin's* letters on the government of China. I find therefore that after some pertinent questions and answers, the whole wonder vanishes.

* It is the cudgel that governs China, says Father du Halde.

Might not our missionaries have been deceived by an appearance of order? Might not they have been struck with that continual exercise of a single person's will, an exercise by which they themselves are governed, and which they are so pleased to find in the courts of the Indian princes; because as they go thither only in order to introduce great changes, it is much easier to convince those princes that there are no bounds to their power, than to persuade the people that there are none to their submission*?

In fine, there is frequently some kind of truth even in errors themselves. It may be owing to particular, and perhaps very singular circumstances, that the Chinese government is not so corrupt as one might naturally expect. The climate and some other physical causes may, in that country, have had so strong an influence on the morals, as in some measure to produce wonders.

The climate of China is surprizingly favourable to the propagation of the human species. The women are the most prolific in the whole world. The most barbarous tyranny can put no stop to the progress of propagation. The prince cannot say there like Pharaoh, *Let us deal wisely with them lest they multiply*. He would be rather reduced to Nero's wish, that mankind had all but one head. In spite of tyranny, China by the force of its climate will be always populous, and will triumph over the tyrannical oppressor.

China like all other countries, that live chiefly upon rice, is subject to frequent famines. When

* See in Father Du Halde how the missionaries availed themselves of the authority of Canhi to silence the Mandarines, who constantly declared, that by the laws of the country, no foreign worship could be established in the empire.

the people are ready to starve with hunger, they disperse in order to seek for nourishment; in consequence of which, small gangs of robbers are formed on all sides. Most of them are extirpated in their very infancy; others swell, and are likewise suppressed. And yet in so great a number of such distant provinces, some gang or other may happen to meet with success. In that case they maintain their ground, strengthen their party, form themselves into a military body, march strait up to the capital, and their leader ascends the throne.

From the very nature of things, a bad administration is here immediately punished. The want of subsistence in so populous a country, produces sudden disorders. The reason why the redress of abuses is in other countries attended with such difficulty, is because their effects are not immediately felt; the prince is not informed in so sudden and sensible a manner as in China.

The emperor of China is not taught like our princes, that if he governs ill, he will be less happy in the other life, less potent and less rich in this. He knows that if his government is not good, he will be stript both of empire and life.

As China grows every day more populous notwithstanding the exposing of children, the inhabitants are incessantly employed in tilling the lands for their subsistence. This requires a very extraordinary attention, in the government. It is their perpetual concern that every body should be able to work without any apprehension of being deprived of the fruits of his labour. Consequently this is not so much a civil as a domestic government.

Such has been the origin of those regulations which have been so greatly extolled. They wanted to make the laws reign in conjunction with despotic power; but whatever is joined with the latter loses all its force. In vain did this arbitrary sway, labouring under its own misfortunes, desire to be fettered; it armed it self with its chains, and is become still more terrible.

China is therefore a despotic state, whose principle is fear. Perhaps in the earliest dynasties, when the empire had not so large an extent, the government might have deviated a little from this spirit: but the case at present is otherwise.



BOOK IX.

Of Laws in the relation they bear to a defensive Force.

CHAP. I.

In what manner Republics provide for their Safety.

IF a republic is small, it is destroyed by a foreign force; if it be large, it is ruined by an internal imperfection*.

BOOK
IX.
Chap. I.

To this twofold inconvenience both Democracies and Aristocracies are equally liable, and that whether they be good or bad. The evil is in the very thing itself; and no form can redress it.

It is therefore very probable that mankind would have been at length obliged to live constantly under the government of a single person, had they not contrived a kind of constitution that has all the internal advantages of a republican, together with the external force of a monarchical government. I mean a confederate republic.

This form of government is a convention by which several small states agree to become members of a larger one which they intend to form. It is a kind of assemblage of societies, that constitute a new one, capable of increasing by means of new associations, till they arrive to such a degree of power,

* *Fato potentia, non sua vi nixa.* Tacit.

as to be able to provide for the security of the united body.

It was these associations that contributed so long to the prosperity of Greece. By these the Romans attacked the universe, and by these alone the universe withstood them: for when Rome was arrived to her highest pitch of grandeur, it was the associations behind the Danube and the Rhine, associations formed by the terror of her arms, that enabled the Barbarians to resist her.

From hence it proceeds that Holland, † Germany, and the Swiss Cantons, are considered in Europe as perpetual republics.

The associations of cities were formerly more necessary than in our times. A weak defenceless town was exposed to greater dangers. By conquest it was deprived not only of the executive and legislative power, as at present, but moreover of all human property*.

A republic of this kind able to withstand an external force, may support itself without any internal corruption; the form of this society prevents all manner of inconveniencies.

If a single member should attempt to usurp the supreme authority, he could not be supposed to have an equal authority and credit in all the confederate states. Were he to have too great an influence over one, this would alarm the rest; were he to subdue a part, that which would still remain free, might oppose him with forces independent of those which he

† It is composed of about fifty different republics. *State of the United Provinces* by M. Janisson.

* Civil liberty, goods, wives, children, temples, and even burying places.

had usurped, and overpower him before he could be settled in his usurpation.

Should a popular insurrection happen in one of the confederate states, the others are able to quell it. Should abuses creep into one part, they are reformed by those that remain sound. The state may be destroyed on one side, and not on the other; the confederacy may be dissolved, and the confederates preserve their sovereignty.

As this government is composed of petty republics, it enjoys the internal happiness of each; and with respect to its external situation, it is possessed by means of the association, of all the advantages of large monarchies.

C H A P. II.

That a confederate Government ought to be composed of states of the same nature, especially of the republican Kind.

THE Canaanites were destroyed, by reason they were petty monarchies that had no union nor confederacy for their common defence: And indeed a confederacy is not agreeable to the nature of petty monarchies.

As the confederate republic of Germany consists of free cities, and of petty states subject to different princes, experience shews us that it is much more imperfect than that of Holland and Swisserland.

The spirit of monarchy is war and enlargement of dominion: peace and moderation is the spirit of a republic. These two kinds of government cannot naturally subsist in a confederate republic.

Thus

BOOK
IX.
Chap. 3.

Thus we observe in the Roman history, that when the Veientes had chosen a king, they were immediately abandoned by all the other petty republics of Tuscany. Greece was undone as soon as the kings of Macedon obtained a seat among the Amphictyons.

The confederate republic of Germany, composed of princes and free towns, subsists by means of a chief, who is in some respects the magistrate of the union, in others the monarch.

C H A P. III.

Other requisites in a confederate Republic.

IN the republic of Holland one province cannot conclude an alliance without the consent of the others. This law, which is an excellent one and even necessary in a confederate republic, is wanting in the Germanic constitution, where it would prevent the misfortunes that may happen to the whole confederacy, thro' the imprudence, ambition, or avarice of a single member. A republic united by a political confederacy, has given itself intirely up, and has nothing more to resign.

It is difficult for the united states, to be all of an equal extent and power. The Lycian ^(a) republic was an association of twenty three towns; the large ones had three votes in the common council, the middling ones two, and the small towns one. The Dutch republic consists of seven provinces, of different extent of territory, which have each one voice.

The cities of Lycia ^(b) contributed to the expences of the state, according to the proportion of suffrages. The provinces of the united Netherlands cannot

(a) Strabo
lib. 14.

(b) Strabo
lib. 4.

cannot follow this proportion; they must be directed by that of their power. Book IX.
Chap. 4.
(c) Ibid.

In Lycia (c) the judges and town magistrates were elected by the common council, and according to the proportion already mentioned. In the republic of Holland they are not chosen by the common council, but each town names its magistrates. Were I to give a model of an excellent confederate republic, I should pitch upon that of Lycia.

C H A P. IV.

In what manner despotic Governments provide for their security.

AS republics provide for their security by uniting, despotic governments do it by separating, and by keeping themselves, as it were, single. They sacrifice a part of the country, and by ravaging and desolating the frontiers, they render the heart of the empire inaccessible.

It is a received axiom in geometry, that the greater the extent of bodies, the more their circumference is relatively small. This practice therefore of laying the frontiers waste, is more tolerable in large than in middling states.

A despotic government does all the mischief to itself that could be done by a cruel enemy, whose progress it could not resist.

It preserves itself likewise by another kind of separation, which is by putting the most distant provinces into the hands of a feudatary prince. The Mogul, the king of Persia, and the emperors of China have their feudataries; and the Turks have found their account in putting the Tartars, the Moldavians,

Moldavians, the Walachians, and formerly the Transilvanians between themselves and their enemies.

C H A P. V.

In what manner a Monarchical Government provides for its Security.

A Monarchy never destroys itself like a despotic government. But a kingdom of a moderate extent is liable to sudden invasions : It must therefore have strong holds to defend its frontiers ; and troops to garrison those holds. The least spot of ground is disputed with art, with courage, and obstinacy. Despotic states make incursions against one another ; it is monarchies only that wage war.

Fortresses are proper for monarchies ; despotic governments are afraid of them. They dare not intrust them to any body, for there is no one that has a love for the prince or his government.

C H A P. VI.

Of the defensive Force of States in general.

TO preserve a state in its due force, it must have such an extent, as to admit of a proportion between the quickness with which it may be invaded, and that with which it may render the invasion abortive. As an invader may instantly appear on all sides, it is requisite that the state should be able to make on all sides its defence ; consequently it should be of a moderate extent, proportioned to the degree of velocity that nature has given to man to enable him to move from one place to another.

France

France and Spain are exactly of a proper extent. They have so easy a communication for their forces, as to be able to convey them immediately to what part they have a mind ; the armies unite and pass with rapidity from one frontier to another, without any apprehension of such difficulties as require time to remove.

It is extremely happy for France, that the capital stands nearer to the different frontiers in proportion to their weakness ; and the prince has a better view of each part of his country in proportion as it is more exposed.

But when a vast empire, like Persia, is attacked, it is several months before the troops are able to assemble ; and then they cannot make such forced marches for that length of time, as they can for fifteen days. If the army on the frontiers is beaten, it is certainly dispersed, because there is no neighbouring place of retreat. The victor, meeting with no resistance, advances with all expedition, sits down before the capital and lays siege to it, when there is scarce time enough to give notice to the governors of the provinces to come to its relief. Those who foresee an imminent revolution, hasten it by their disobedience. For men whose fidelity is intirely owing to the proximity of punishment, are easily corrupted as soon as it becomes distant ; their aim is their own private interest. The empire is subverted, the capital taken, and the conqueror disputes the several provinces with the governors.

The real power of a prince does not consist so much in the facility he meets with in making conquests, as in the difficulty an enemy finds in attacking

ing him, and, if I may so speak, in the immutability of his condition. But the increase of territory obliges a government to expose new sides by which it may be attacked.

As monarchs therefore ought to be endued with wisdom in order to increase, they ought likewise to have an equal share of prudence to limit, their power. Upon removing the inconveniencies of too small a territory, they ought to have their eye constantly on the inconveniences that attend its immoderate enlargement.

C H A P. VII.

A Reflection.

THE enemies of a great prince, whose reign was protracted to an unusual length, have very often accused him, rather, I believe, from their own fears, than upon any solid foundation, of having formed and carried on a project of universal monarchy. Had he succeeded, nothing would have been more fatal to Europe, to his ancient subjects, to himself, and to his family. Heaven that knows our true interests, served him more by defeats, than it could have done by victories. Instead of making him the only sovereign in Europe, it favoured him more by rendering him the most powerful.

The subjects of this prince, who in foreign countries are never affected but with what they have forsaken; who on leaving their own homes look upon glory as a sovereign good, and in distant countries as an obstacle to their return; who displease you even by their good qualities, because they seem

to be joined with an air of contempt; who are capable of supporting wounds, perils, and fatigues, but not the loss of their pleasures; who love nothing so much as gaiety, and console themselves for the loss of a battle by singing a ballad on the general; those subjects, I say, would never have been able to compass an enterprize, so as to render it impossible to be defeated in one country, without miscarrying in all the others; nor to miscarry for a moment without miscarrying for ever.

C H A P. VIII.

A particular Case in which the defensive Force of a State is inferior to the offensive.

IT was a saying of the lord of Coucy to king Charles V. *that the English are never weaker, nor easier overcome than in their own country.* The same was observed of the Romans; the same of the Carthaginians; and the same always will happen to every power that sends armies to distant countries, in order to reunite by dint of discipline and military power, those who are divided among themselves by political or civil interests. The state finds itself weakened by the disorder that still continues, and more so by the remedy.

The lord of Coucy's maxim is an exception to the general rule, which disapproves of wars against distant countries. And this exception confirms likewise the rule, because it takes place only in respect to those by whom such wars are undertaken.

CHAP. IX.

Of the relative Force of States.

BOOK
IX.
Chap. 9,
& 10.*

ALL grandeur, force, and power are relative. Care therefore must be taken that in endeavouring to increase the real grandeur, the relative be not diminished.

Under the reign of Lewis XIV. France was at its highest pitch of relative grandeur. Germany had not yet such great monarchs as it has since produced. Italy was in the same case. England and Scotland were not yet formed into one united kingdom. Arragon was not joined to Castile; the distant parts of the Spanish monarchy were weakened by it, and weakened it in their turn; and Muscovy was as little known in Europe, as Crim Tartary.

CHAP. X.

Of the Weakness of neighbouring States.

WHENSOEVER a state lies contiguous to another that happens to be in its decline, the former ought to take particular care not to precipitate the latter's ruin, because this is the happiest situation imaginable; nothing being so convenient for one prince as to be near another who receives for him all the rebuffs and insults of fortune. And it seldom happens that by subduing such a state, the real power of the conqueror is as much increased, as the relative is diminished.

B O O K X.

*Of Laws in the Relation they bear to
offensive Force.*

C H A P. I.

Of offensive Force.

OFFENSIVE force is regulated by the B O O K
X.
Ch. 1 & 2
law of nations, which is the political law
of each country considered in its relation to every
other.

C H A P. II.

Of War.

TH E life of governments is like that of man.
The latter has a right to kill in case of natural
defence; the former have a right to wage war
for their own preservation.

In the case of natural defence I have a right to
kill, because my life is in respect to me, what the
life of my antagonist is to him: in the same man-
ner a state wages war, because its preservation is like
that of any other being.

Among citizens the right of natural defence does
not imply a necessity of attacking. Instead of at-
tacking they need only have recourse to proper tribu-
nals. They cannot therefore exercise this right of
defence, but in sudden cases, when immediate death
would be the consequence of waiting for the assist-

Book
X.
Chap. 3.

ance of the laws. But among societies the right of natural defence carries along with it sometimes the necessity of attacking; as for instance, when one nation sees that a longer peace will enable another to destroy her, and that to attack that nation instantly is the only way to prevent her own destruction.

From thence it follows, that small societies have oftener a right to declare war than great ones, because they are oftener in the case of being afraid of destruction.

The right therefore of war is derived from necessity and strict justice. If those who direct the conscience or councils of princes do not hold by this, all is undone: when they proceed on arbitrary principles of glory, conveniency, and utility; torrents of blood will overspread the earth.

But above all, let them not avail themselves of any such idle plea as the glory of the prince: his glory is nothing but pride; it is a passion and not a legitimate right.

It is true the fame of his power might increase the strength of his government; but it might be equally increased by the reputation of his justice.

C H A P. III.

Of the Right of Conquest.

FROM the right of war comes that of conquest; which is the consequence of that right, and ought therefore to follow its spirit.

The right the conqueror has over a conquered people is directed by four sorts of laws, the law of nature which makes every thing tend to the preservation of the species; the law of natural reason,

which

which teaches us to do to others what we would have done to ourselves; the law that forms political societies, whose duration nature has not limited; and in fine the law derived from the nature of the thing itself. Conquest is an acquisition; acquisition carries with it the spirit of preservation and use, and not of destruction.

A conquered nation is treated by the conqueror one of the four following ways. Either he continues to rule them according to their own laws, and assumes to himself only the exercise of the political and civil government; or he gives them a new political and civil government; or he destroys and disperses the society; or in fine, he exterminates the inhabitants.

The first way is conformable to the law of nations now followed; the fourth is more agreeable to the law of nations followed by the Romans: in respect to which I leave the reader to judge how far we have improved upon the ancients. We must give due praise to our modern times, to our present reason, to our religion, philosophy, and manners.

The authors of our public law, guided by ancient histories, without confining themselves to cases of strict necessity, have fallen into very great errors. They have adopted tyrannical and arbitrary principles, by supposing the conquerors to be invested with I know not what right to kill; from thence they have drawn consequences as terrible as the very principle, and established maxims which the conquerors themselves, when possessed of the least grain of sense, never presumed to follow. It is a plain case that when the conquest is completed, the conqueror has no longer a right to kill, because he has no

longer the plea of natural defence and self-preservation.

What has led them into this mistake, is that they imagined a conqueror had a right to destroy the society; from whence they inferred that he had a right to destroy the men that compose it; a wrong consequence from a false principle. For from the destruction of the society it does not at all follow that the people who compose it ought to be also destroyed. Society is the union of men, and not the men themselves; the citizen may perish, and the man remain.

From the right of killing in case of conquest, politicians have drawn that of reducing to slavery; a consequence as ill grounded as the principle.

There is no such thing as a right of reducing people to slavery, but when it becomes necessary for the preservation of the conquest. Preservation, but never servitude, is the end of conquest; tho' servitude may happen sometimes to be a necessary means of preservation.

Even in that case it is contrary to the nature of things that the slavery should be perpetual. The people enslaved ought to be rendered capable of becoming subjects. Slavery in conquests is an accidental thing. When after the expiration of a certain space of time all the parts of the conquering state are connected with the conquered nation, by custom, marriages, laws, associations, and by a certain conformity of spirit; there ought to be an end of the slavery. For the rights of the conqueror are founded intirely on the want of those very things, and on the estrangement between the two nations which prevents their confiding in each other.

A conqueror therefore who reduces the conquered people to slavery, ought always to reserve to himself the means (for means there are without number) of restoring them to their liberty.

Book
X.
Chap. 4.

These are far from being vague and uncertain notions. Thus our ancestors acted, those ancestors who conquered the Roman empire. The laws they made in the heat of fire, action, impetuosity, and the pride of victory, were afterwards softened; those laws were severe, but they rendered them impartial. The Burgundians, Goths, and Lombards would always have the Romans continue a conquered people; but the laws of *Euric*, *Gundebald*, and *Rotharis*, made the Romans and Barbarians fellow-citizens⁽¹⁾.

(1) See the
Code of
Barbarian
laws.

CHAP. IV.

Some Advantages of a conquered People.

INSTEAD of inferring such fatal consequences from the right of conquest, much better would it have been for politicians to mention the advantages which this very right may sometimes give to a conquered people; advantages which would be more sensibly, more universally felt, were our law of nations exactly followed, and established over all the earth.

Conquered countries are, generally speaking, degenerated from their original institution. Corruption has crept in, the execution of the laws has been neglected, and the government is grown oppressive. Who can question but such a state would be a gainer, and derive some advantages from the very conquest itself, if it did not prove destructive?

When a government is arrived to that degree of corruption as to be incapable of reforming itself, it would not lose much by being new moulded. A conqueror that enters triumphant into a country, where the moneyed men have by a thousand wiles and artifices insensibly practised innumerable ways of usurping; where the miserable people, who grieve to see abuses grow into laws, live under oppression, and think they have no right to complain; a conqueror, I say, may make a total change, and then the masked tyranny will be the first thing exposed to his fury.

We have seen, for instance, countries oppressed by the farmers of the revenues, and eased afterwards by the conqueror, who had neither the engagements nor wants of the legitimate prince. Even the abuses have been often redressed without any interposition of the conqueror.

Sometimes the frugality of a conquering nation has enabled them to allow the conquered those necessities, of which they had been deprived under a lawful prince.

✓ A conquest may destroy pernicious prejudices, and lay, if I may presume to make use of the expression, the nation under a better genius.

What good might not the Spaniards have done to the Mexicans? They had a mild religion to impart to them; but they gave them a mad superstition. They might have set slaves at liberty; they made free men slaves. They might have undeceived them with regard to the abuse of human sacrifices; instead of that they destroyed them. Never should I have done, were I to recount all the good they did not, and all the mischief they did.

It

It is a conqueror's business to repair a part of the mischief he has committed. The right therefore of conquest I define thus: a necessary, lawful, and unhappy right, which leaves always an immense debt to discharge in order to clear the obligations of human nature.

Boo X.
Ch. 4, & 5.

CHAP. V.

Gelon King of Syracuse.

THE noblest treaty of peace ever mentioned in history is, in my opinion, that which Gelon made with the Carthaginians. He insisted upon their abolishing the custom of sacrificing their children^(b). Glorious indeed! After having defeated three hundred thousand Carthaginians, he required a condition that was advantageous only to themselves, or rather he stipulated in favour of human nature.

(b) See M. Barbeyrac's collection Art. 112.

CHAP. VI.

Of Conquests made by a Republic.

IT is contrary to the nature of things, that in a confederate government one state should make any conquest over another, as in our days we have seen in Switzerland*. In mixt confederate republics, where the association is between small republics and small monarchies, this is not so absurd.

Contrary it is also to the nature of things, that a democratical republic should conquer towns, which cannot enter into the sphere of its democracy. It is

* With regard to Tockenburgh.

necessary that the conquered people should be capable of enjoying the privileges of sovereignty, as was settled in the very beginning among the Romans. The conquest ought to be limited to the number of citizens fixt for the democracy.

If a democratical republic subdues a nation in order to govern them as subjects, it exposes its own liberty, because it intrusts too great a power to the officers sent into the conquered provinces.

How great would have been the danger of the republic of Carthage, had Hannibal made himself master of Rome? What would not he have done in his own country, had he been victorious, he who caused so many revolutions after his defeat †?

Hanno could never have dissuaded the senate from sending succours to Hannibal, had he used no other argument than his own jealousy. The Carthaginian senate, whose wisdom is so highly extolled by Aristotle (and which has been evidently proved by the prosperity of that republic) could never have been determined by other than sensible reasons. They must have been stupid not to see, that an army at the distance of three hundred leagues would necessarily be exposed to losses that ought to be repaired.

Hanno's party insisted that Hannibal should be delivered up to the Romans *. They could not at that time be afraid of the Romans; they were therefore afraid of Hannibal.

It was impossible, some will say, for them to imagine that Hannibal had been so successful. But how was it possible for them to doubt of it? Could

† He was at the head of a faction.

* Hanno wanted to deliver Hannibal up to the Romans, as Cato wanted to deliver up Cæsar to the Gauls.

the Carthaginians, a people spread all over the earth, B O O K
X.
Ch. 7, & 8.
be ignorant of what was transacting in Italy? No: they were sufficiently acquainted with it, and for that reason they did not care to send supplies to Hannibal.

Hanno became more resolute after the battle of Trebia, after the battle of Thrasimenus, after that of Cannæ; it was not his incredulity that increased, but his fear.

The same Subject continued.

C H A P. VII.

TH E R E is still another inconveniency in conquests made by democracies: their government is always odious to the conquered states. It is apparently monarchical: but in reality it is much more oppressive than monarchy, as the experience of all ages and countries evinces.

The conquered people are in a melancholy situation; they neither enjoy the advantages of a republic, nor those of a monarchy.

What has been here said of a popular state, is applicable to aristocracy.

C H A P. VIII.

The same Subject continued.

WH E N a republic therefore keeps another nation in subjection, it should endeavour to repair the inconveniencies arising from the nature of its situation, by giving it good laws both for the political and civil government of the people.

We have an instance of an island in the Mediterranean, subject to an Italian republic; whose political and civil laws in respect to the inhabitants of that island were extremely defective. The act of amnesty *, by which it ordained that no one should be condemned to bodily punishment in consequence of the private knowledge of the governor, *ex informata conscientia*, is still recent in every body's memory. There have been frequent instances of the people's petitioning for privileges: here the sovereign grants only the common right of all nations.

C H A P. IX.

Of Conquests made by a Monarchy.

IF a monarchy can for a long time subsist before it is weakened by its increase, it will become formidable; and its strength will remain intire, while pent up by the neighbouring monarchies.

It ought not therefore to aim at conquests beyond the natural limits of its government. As soon as it has passed these limits, it is prudence to stop.

In this kind of conquest things must be left as they were found; the same courts of judicature, the same laws, the same customs, the same privileges: there ought to be no other alteration than that of the army and of the name of the sovereign.

* Of the 18th of October 1738. printed at Genoa, by Franchelly. Vietiamo al nostro general governatore in detta isola di condannare in avvenire solamente *ex informata conscientia* persona alcuna nazionale in pena affittiva; potrà bensì arrestare ed incarcerare le persone che gli saranno sospette, salvo di renderne poi a noi conto sollecitamente. Art. 6. See the Amsterdam Gazette of the 23d of September 1738.

When a monarchy has extended its limits by the conquest of some neighbouring provinces, it should treat those provinces with great lenity.

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X.
Chap. 10.

If a monarchy has been a long while endeavouring at conquests, the provinces of its ancient demesne are generally ill-used. They are obliged to submit both to the new and to the ancient abuses; and to be depopulated by a vast metropolis that swallows up the whole. Now if after having made conquests round this demesne, the conquered people were treated like the ancient subjects, the state would be undone; the taxes sent by the conquered provinces to the capital would never return; the inhabitants of the frontiers would be ruined, and consequently the frontiers would be weaker; the people would be disaffected; and the subsistence of the armies designed to act and remain there, would become more precarious.

Such is the necessary state of a conquering monarchy; a shocking luxury in the capital; misery in the provinces somewhat distant; and plenty in the most remote. It is the same with such a monarchy as with our planet; fire at the center, verdure on the surface, and between both a dry, cold, and barren land.

CHAP. X.

Of one Monarchy that subdues another.

SOMETIMES one monarchy subdues another. The smaller the latter, the better it is checked by fortresses; and the larger it is, the better it is preserved by colonies.

CHAP.

CHAP. XI.

Of the Manners of a conquered People.

Book
X.
Chap. 11.
& 12.

IT is not sufficient in those conquests to let the conquered nation enjoy their own laws; it is perhaps more necessary to leave them also their manners, because people generally know, love, and defend their manners better than their laws.

(c) See Puf-
fendorf's
universal
History.

The French have been driven nine times out of Italy, because, as historians say (c), of their insolent familiarities with the fair sex. It is too much for a nation to be obliged to bear not only with the pride of conquerors, but with their incontinence and indiscretion; these are, without doubt, most grievous and intolerable, as they are the source of infinite outrages.

CHAP. XII.

Of a Law of Cyrus.

FAR am I from thinking that a good law which Cyrus made to oblige the Lydians to practise none but mean or infamous professions. It is true, he directed his attention to what was of the greatest importance; he thought of revolts, and not of invasions: but invasions will soon come; for the Persians and Lydians unite and corrupt each other. I would therefore much rather support by laws the simplicity and rudeness of the conquering nation, than the effeminacy of the conquered.

(d) Dionys.
Halicar.
1. 7.

Aristodemus tyrant of Cumæ (d), used all his endeavours to banish courage and to enervate the minds of youth. He ordered that boys should let
their

their hair grow in the same manner as girls, that they should deck it with flowers, and wear long robes of different colours down to their heels; that when they went to their masters of music and dancing, they should have women with them to carry their umbrello's, perfumes, and fans, and to present them with combs and looking-glasses whenever they bathed. This education lasted till the age of twenty; an education that could be agreeable to none but to a petty tyrant, who exposes his sovereignty to defend his life.

C H A P. XIII.

A L E X A N D E R.

AL E X A N D E R made a surprizing conquest. Let us see how it was conducted; and since enough has been said by other writers of his valour, let us mention something concerning his prudence.

The measures he took were just. He did not set out till he had compleated the reduction of Greece; he availed himself of this reduction for no other end than for the execution of his enterprize; and he left nothing, by which he could be annoyed, behind him. He began his attack against the maritime provinces; he made his land forces keep close to the sea coast that they might not be separated from his fleet; he made an admirable use of discipline against numbers; he never wanted provisions; and if it be true that victory gave him every thing, he, in his turn, did every thing to obtain it.

In this manner he carried on his conquests; let us now see how he preserved them.

He

Book
X.
Chap. 13.
(^c) This
was Aris-
totle's ad-
vice. Plu-
tarch's
Morals, of
the for-
tune and
virtue of
Alexan-
der.

(^d) See the
Law of
the Bur-
gundians,
tit. 12.
art. 5.

(^e) See the
Law of the
Visigoths
book 3.

tit. 1. § 1.
which ab-
rogates
the ancient
law that
had more
regard, it
says, to
the differ-
ence of
nations
than to
that of
people's
conditi-
ons.

(^f) See the
law of the
Lombards
book 2,
tit. 7. § 1.
& 2.

He opposed those who would have had him treat the Greeks as masters (^c), and the Persians as slaves. He thought only of uniting the two nations, and of abolishing the distinctions of a conquering and a conquered people. After he had compleated his victories, he relinquished all those prejudices that had helped him to obtain them. He assumed the manners of the Persians, that he might not afflict them too much by obliging them to conform to those of the Greeks. It was this humanity which made him shew so great a respect for the wife and mother of Darius; this that made him so continent; this that caused his death to be so much lamented by the Persians. What a conqueror! he is lamented by all the nations he has subdued! What an usurper! At his death the very family he has cast from the throne, is all in tears. These were the most glorious passages in his life, and such as history cannot produce an instance in any other conqueror.

Nothing consolidates more a conquest than the union formed between the two nations by marriages. Alexander chose his wives from the nation he had subdued; he insisted on his courtiers doing the same; and the rest of the Macedonians followed the example. The Franks and Burgundians permitted those marriages (^d); the Visigoths forbade them in Spain and afterwards allowed them (^e). By the Lombards they were not only allowed but encouraged (^f). When the Romans wanted to weaken Macedonia, they ordained that there should be no intermarriages between the people of different provinces.

Alexander,

Alexander, whose aim was to unite the two nations, thought fit to establish in Persia a great number of Greek colonies. He built therefore a vast multitude of towns; and so strongly were all the parts of this new empire cemented, that after his decease, amidst the trouble and confusion of the most frightful civil wars, when the Greeks had reduced themselves, as it were, to a state of annihilation, not a single Province of Persia revolted.

To prevent Greece and Macedon from being too much exhausted, he sent a colony of Jews to Alexandria; the manners of those people signified nothing to him, provided he could be sure of their fidelity.

The kings of Syria, abandoning the plan laid down by the founder of the empire, resolved to oblige the Jews to conform to the manners of the Greeks; a resolution that gave the most terrible shocks to their government.

C H A P. XIV.

C H A R L E S XII.

THIS prince, who depended intirely on his own strength, hastened his ruin by forming designs that could never be executed but by a long war; a thing which his kingdom was unable to support.

It was not a declining state he undertook to subvert, but a rising empire. The Russians made use of the war he waged against them, as of a military school. Every defeat brought them nearer to victory; and losing abroad, they learnt to defend themselves at home.

Charles

Charles in the deserts of Poland imagined himself master of the universe: here he wandered, and with him in some measure wandered Sweden; whilst his capital enemy acquired new strength against him, locked him up, made settlements along the Baltic, destroyed or subdued Livonia.

Sweden was like a river whose waters are cut off at the fountain head in order to change its course.

It was not the affair of *Pultova* that ruined *Charles*. Had he not been destroyed at that place, he would in another. The casualties of fortune are easily repaired; but who can be guarded against events that incessantly arise from the nature of things?

But neither nature nor fortune were ever so much against him, as he himself.

He was not directed by the actual situation of things, but by a kind of model he had formed to himself; and even this he followed very ill. He was not an *Alexander*; but he would have been *Alexander's* best soldier.

Alexander's project succeeded because it was prudently concerted. The bad success of the Persians in their several invasions of Greece, the conquests of *Agésilas* and the retreat of the ten thousand had shewn to demonstration the superiority of the Greeks in their manner of fighting and in the arms they made use of; and it was well known that the Persians were too proud to be corrected.

It was no longer possible for them to weaken Greece by divisions: Greece was then united under one head, who could not pitch upon a better method of rendering her insensible of her servitude, than by flattering her vanity with the destruction of her hereditary enemy, and with the hopes of the conquest of Asia.

An

An empire cultivated by the most industrious nation in the world, that tilled the lands thro' a principle of religion, an empire abounding with every conveniency of life, furnished the enemy with all necessary means of subsisting.

It was easy to judge by the pride of those kings, who in vain were mortified by their numerous defeats, that they would precipitate their ruin by being so forward to venture battles; and to imagine that flattery would never permit them to doubt of their grandeur.

The project was not only wise, but wisely executed. Alexander in the rapidity of his conquests, even in the fire of his passions, had, if I may presume to use the expression, a flash of reason by which he was directed, and which those who wanted to make a romance of his history, and whose minds were more debauched than his, could not conceal from posterity.

C H A P. XV.

New Methods of preserving a Conquest.

WHEN a monarch has conquered a large country, he may make use of an admirable method, equally proper for moderating despotic power, and for preserving the conquest; it is a method practised by the emperors of China.

In order to prevent the conquered nation from falling into despair, the conquerors from growing insolent and proud, the government from becoming military, and to contain the two nations within duty; the Tartar family now on the throne of China, has ordained that every military corps in the

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provinces should be composed half of Chinese and half of Tartars, to the end that the jealousy between the two nations may keep them within bounds. The courts of judicature are likewise half Chinese, and half Tartars. This is productive of several good effects. 1. The two nations keep one another in awe. 2. They both preserve the civil and military power, and one is not destroyed by the other. 3. The conquering nation may spread itself without being weakened and lost. It is likewise enabled to resist civil and foreign wars. The want of so wise an institution as this, has been the ruin of almost all the conquerors that ever existed.

CHAP. XVI.

Of Conquests made by a despotic Prince.

WHEN a conquest happens to be vastly large, it supposes a despotic power: and then the army dispersed in the provinces is not sufficient. There should be always a trusty body of troops around the prince, ready to fall instantly upon any part of the empire that might chance to waver. This military corps ought to awe the rest, and to strike terror into those who thro' necessity have been intrusted with any authority in the empire. The emperor of China has always a large body of Tartars near his person, ready upon all occasions. In India, in Turkey, in Japan, the prince has always a body-guard, independent of the other regular forces. This particular corps keeps the dispersed troops in awe.

CHAP.

C H A P. XVII.

The same Subject continued.

WE have observed that the countries subdued by a despotic monarch, ought to be feodary. Historians exhaust themselves in extolling the generosity of those conquerors who restored to the throne the princes they had vanquished. Extremely generous then were the Romans, who made kings in all parts, in order to have instruments of slavery †. A proceeding of that kind is absolutely necessary. If the conqueror intends to preserve the conquered country, neither the governors he sends will be able to contain the subjects within duty, nor he himself the governors. He will be obliged to strip his ancient patrimony of troops, in order to secure the new. All the miseries of the two nations will be common; the civil war of one will communicate itself to the other. On the contrary if the conqueror restores the legitimate prince to the throne; he will have a necessary ally, by the junction of whose forces, his own will be augmented. We have a recent instance of what has been here said in *Shah Nadir*, who conquered the Mogul, seized his treasures, and left him the possession of Indostan.

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† Ut haberent instrumenta servitutis & reges.



B O O K XI.

*Of the Laws that form political Liberty,
with regard to the Constitution.*

C H A P. I.

A general I D E A.

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Ch. 1, & 2.

I Make a distinction between the laws that form political liberty with regard to the constitution, and those by which it is formed in respect to the citizen. The former shall be the subject of this book; the latter I shall examine in the next.

C H A P. II.

Different Significations given to the word Liberty.

TH E R E is no word that has admitted of more various significations, and has made more different impressions on human minds, than that of *Liberty*. Some have taken it for a facility of deposing a person on whom they had conferred a tyrannical authority; others for the power of chusing a person whom they are obliged to obey; others for the right of bearing arms, and of being thereby enabled to use violence; others in fine for the privilege of being governed by a native of their own country or by their own laws †. A certain

† I have copied, says Cicero, Scævola's edict, which permits the Greeks to terminate their differences among themselves according to their own laws; this makes them consider themselves as a free people.

nation, for a long time thought liberty consisted in the privilege of wearing a long beard *. Some have annexed this name to one form of government, in exclusion of others: Those who had a republican taste, applied it to this government; those who liked a monarchical state, gave it to monarchies §. Thus they all have applied the name of *liberty* to the government most conformable to their own customs and inclinations: and as in a republic people have not so constant and so present a view of the instruments of the evils they complain of, and likewise as the laws seem there to speak more, and the executors of the laws less, it is generally attributed to republics, and denied to monarchies. In fine as in democracies the people seem to do very near whatever they please, liberty has been placed in this sort of government, and the power of the people has been confounded with their liberty.

C H A P. III.

In what Liberty consists.

IT is true that in democracies the people seem to do what they please; but political liberty does not consist in an unrestrained freedom. In governments, that is, in societies directed by laws, liberty can consist only in the power of doing what we ought to will, and in not being constrained to do what we ought not to will.

We must have continually present to our minds the difference between independence and liberty.

* The Russians could not bear that the Czar Peter should make them cut it off.

§ The Cappadocians refused the condition of a republican state, which was offered them by the Romans.

THE SPIRIT

Liberty is a right of doing whatever the laws permit; and if a citizen could do what they forbid, he would no longer be possess'd of liberty, because all his fellow citizens would have the same power.

CHAP. IV.

The same Subject continued.

DEmocratic and aristocratic states are not necessarily free. Political liberty is to be met with only in moderate governments: yet even in these it is not always met with. It is there only when there is no abuse of power: but constant experience shews us, that every man invested with power is apt to abuse it; he pushes on till he comes to the utmost limit. Is it not strange, tho' true, to say, that virtue itself has need of limits?

To prevent the abuse of power, 'tis necessary that by the very disposition of things power should be a check to power. A government may be so constituted, as no man shall be compelled to do things to which the law does not oblige him, nor forced to abstain from things which the law permits.

CHAP. V.

Of the end or view of different Governments.

THO' all governments have the same general end, which is that of preservation, yet each has another particular view. Increase of dominion was the view of Rome; war, of Sparta; religion, of the Jewish laws; commerce, that of Marseilles; public

public tranquillity, that of the laws of China †; navigation, of the laws of Rhodes; natural liberty, that of the policy of the Savages; in general the pleasures of the prince, that of despotic states; that of monarchies, the prince's and the kingdom's glory: the independence of individuals is the end aimed at by the laws of Poland, and from thence results the oppression of the whole *.

One nation there is also in the world, that has for the direct end of its constitution political liberty. We shall examine presently the principles on which this liberty is founded: if they are found, liberty will appear as in a mirror.

To discover political liberty in a constitution, no great labour is requisite. If we are capable of seeing it where it exists, why should we go any further in search of it?

C H A P. VI.

Of the Constitution of England.

IN every government there are three sorts of power: the legislative; the executive in respect to things dependent on the law of nations; and the executive, in regard to things that depend on the civil law.

By virtue of the first, the prince or magistrate enacts temporary or perpetual laws, and amends or abrogates those that have been already enacted. By the second, he makes peace or war, sends or receives embassies, establishes the public security, and

† The natural end of a state that has no foreign enemies, or that thinks itself secured against them by barriers.

* Inconveniency of the *Liberum veto*.

provides against invasions. By the third, he punishes criminals, or determines the disputes that arise between individuals. The latter we shall call the judiciary power, and the other simply the executive power of the state.

The political liberty of the subject is a tranquillity of mind, arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another.

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Again, there is no liberty, if the power of judging be not separated from the legislative and executive powers. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary controul; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor.

There would be an end of every thing, were the same man, or the same body whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and that of judging the crimes or differences of individuals.

Most kingdoms of Europe enjoy a moderate government, because the prince who is invested with the two first powers, leaves the third to his subjects. In Turkey, where these three powers are united in
the

the Sultan's person, the subjects groan under the weight of a most frightful oppression.

In the republics of Italy where these three powers are united, there is less liberty than in our monarchies. Hence their government is obliged to have recourse to as violent methods for its support, as even that of the Turks; witness the state inquisitors*, and the lion's mouth into which every informer may at all hours throw his written accusations.

What a situation must the poor subject be in, under those republics! The same body of magistrates are possessed, as executors of the laws, of the whole power they have given themselves in quality of legislators. They may plunder the state by their general determinations; and as they have likewise the judiciary power in their hands, every private citizen may be ruined by their particular decisions.

The whole power is here united in one body; and tho' there is no external pomp that indicates a despotic sway, yet the people feel the effects of it every moment.

Hence it is that many of the princes of Europe, whose aim has been levelled at arbitrary power, have constantly set out with uniting in their own persons, all the branches of magistracy, and all the great offices of state.

I allow indeed that the mere hereditary aristocracy of the Italian republics, does not answer exactly to the despotic power of the Eastern princes. The number of magistrates sometimes softens the power of the magistracy; the whole body of the nobles do not always concur in the same designs; and different tribunals are erected, that temper each

* At Venice.

other.

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Chap. 6.

other. Thus at Venice the legislative power is in the *council*, the executive in the *pregadi*, and the judiciary in the *quarantia*. But the mischief is that these different tribunals are composed of magistrates all belonging to the same body; which constitutes almost one and the same power.

The judiciary power ought not to be given to a standing senate; it should be exercised by persons taken from the body of the people†, at certain times of the year, and pursuant to a form and manner prescribed by law, in order to erect a tribunal that should last only as long as necessity requires.

By this means the power of judging, a power so terrible to mankind, not being annexed to any particular state or profession, becomes, as it were, invisible. People have not then the judges continually present to their view; they fear the office, but not the magistrate.

In accusations of a deep or criminal nature, it is proper the person accused should have the privilege of chusing in some measure his judges in concurrence with the law; or at least he should have a right to except against so great a number, that the remaining part may be deemed his own choice.

The other two powers may be given rather to magistrates or permanent bodies, because they are not exercised on any private subject; one being no more than the general will of the state, and the other the execution of that general will.

But tho' the tribunals ought not to be fixt, yet the judgments ought, and to such a degree as to be always conformable to the exact letter of the law. Were they to be the private opinion of the judge,

† As at Athens.

people

people would then live in society without knowing exactly the obligations it lays them under.

The judges ought likewise to be in the same station as the accused, or in other words, his peers, to the end that he may not imagine he is fallen into the hands of persons inclined to treat him with rigour.

If the legislature leaves the executive power in possession of a right to imprison those subjects who can give security for their good behaviour, there is an end of liberty; unless they are taken up, in order to answer without delay to a capital crime; in this case they are really free, being subject only to the power of the law.

But should the legislature think itself in danger by some secret conspiracy against the state, or by a correspondence with a foreign enemy, it might authorize the executive power, for a short and limited time, to imprison suspected persons, who in that case would lose their liberty only for a while, to preserve it for ever.

And this is the only reasonable method, that can be substituted to the tyrannical magistracy of the *Ephori*, and to the *state inquisitors* of Venice, who are also despotical.

As in a free state, every man who is supposed a free agent, ought to be his own governor; so the legislative power should reside in the whole body of the people. But since this is impossible in large states, and in small ones is subject to many inconveniencies; it is fit the people should act by their representatives, what they cannot act by themselves.

The inhabitants of a particular town are much better acquainted with its wants and interests, than with those of other places; and are better judges
of

of the capacity of their neighbours, than of that of the rest of their countrymen. The members therefore of the legislature should not be chosen from the general body of the nation; but it is proper that in every considerable place, a representative should be elected by the inhabitants.

The great advantage of representatives is their being capable of discussing affairs. For this the people collectively are extremely unfit, which is one of the greatest inconveniencies of a democracy.

It is not at all necessary that the representatives who have received a general instruction from their electors, should wait to be particularly instructed on every affair, as is practised in the diets of Germany. True it is that by this way of proceeding, the speeches of the deputies might with greater propriety be called the voice of the nation: but on the other hand this would throw them into infinite delays, would give each deputy a power of controlling the assembly; and on the most urgent and pressing occasions the springs of the nation might be stopped by a single caprice.

When the deputies, as Mr. Sidney well observes, represent a body of people as in Holland, they ought to be accountable to their constituents: but it is a different thing in England, where they are deputed by boroughs.

All the inhabitants of the several districts ought to have a right of voting at the election of a representative, except such as are in so mean a situation, as to be deemed to have no will of their own.

One great fault there was in most of the ancient republics; that the people had a right to active resolutions, such as require some execution, a thing of which

which they are absolutely incapable. They ought to have no hand in the government but for the chusing of representatives, which is within their reach. For tho' few can tell the exact degree of mens capacities, yet there are none but are capable of knowing in general whether the person they chuse is better qualified than most of his neighbours.

Neither ought the representative body to be chosen for active resolutions, for which it is not so fit; but for the enacting of laws, or to see whether the laws already enacted be duly executed, a thing they are very capable of, and which none indeed but themselves can properly perform.

In a state there are always persons distinguished by their birth, riches, or honors: but were they to be confounded with the common people, and to have only the weight of a single vote like the rest, the common liberty would be their slavery, and they would have no interest in supporting it, as most of the popular resolutions would be against them. The share they have therefore in the legislature ought to be proportioned to the other advantages they have in the state; which happens only when they form a body that has a right to put a stop to the enterprises of the people, as the people have a right to oppose any encroachment of theirs.

The legislative power is therefore committed to the body of the nobles, and to the body chosen to represent the people, which have each their assemblies and deliberations apart, each their separate view and interests.

Of the three powers above-mentioned the judiciary is in some measure next to nothing.

There

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There remains therefore only two; and as these have need of a regulating power to temper them, the part of the legislative body composed of the nobility, is extremely proper for this very purpose.

The body of the nobility ought to be hereditary. In the first place it is so in its own nature; and in the next there must be a considerable interest to preserve its privileges; privileges that in themselves are obnoxious to popular envy, and of course in a free state are always in danger.

But as an hereditary power might be tempted to pursue its own particular interests, and forget those of the people; it is proper that where they may reap a singular advantage from being corrupted, as in the laws relating to the supplies, they should have no other share in the legislation, than the power of rejecting, and not that of resolving.

By the *power of resolving*, I mean the right of ordaining by their own authority, or of amending what has been ordained by others. By the *power of rejecting*, I would be understood to mean the right of annulling a resolution taken by another; which was the power of the tribunes at Rome. And tho' the person possessed of the privilege of rejecting may likewise have the right of approving, yet this approbation passes for no more than a declaration, that he intends to make no use of his privilege of rejecting, and is derived from that very privilege.

The executive power ought to be in the hands of a monarch; because this branch of government, which has always need of expedition, is better administered by one than by many: whereas, whatever depends on the legislative power, is of-

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tentimes better regulated by many than by a single person.

But if there was no monarch, and the executive power was committed to a certain number of persons selected from the legislative body, there would be an end then of liberty; by reason the two powers would be united, as the same persons would actually sometimes have, and would moreover be always able to have, a share in both.

Were the legislative body to be a considerable time without meeting, this would likewise put an end to liberty. For of two things one would naturally follow; either that there would be no longer any legislative resolutions, and then the state would fall into anarchy; or that these resolutions would be taken by the executive power which would render it absolute.

It would be needless for the legislative body to continue always assembled. This would be troublesome to the representatives, and moreover would cut out too much work for the executive power, so as to take off its attention from executing, and oblige it to think only of defending its own prerogatives and the right it has to execute.

Again, were the legislative body to be always assembled, it might happen to be kept up only by filling the places of the deceased members with new representatives; and in that case, if the legislative body was once corrupted, the evil would be past all remedy. When different legislative bodies succeed one another, the people who have a bad opinion of that which is actually sitting, may reasonably entertain some hopes of the next: but were it to be always the same body, the people
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Book XI. upon seeing it once corrupted, would no longer expect any good from its laws; and of course they would either become desperate or fall into a state of indolence.

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The legislative body should not assemble of itself. For a body is supposed to have no will but when it is assembled; and besides were it not to assemble unanimously, it would be impossible to determine which was really the legislative body, the part assembled, or the other. And if it had a right to prorogue itself, it might happen never to be prorogued; which would be extremely dangerous in case it should ever attempt to encroach on the executive power. Besides there are seasons, some of which are more proper than others, for assembling the legislative body: it is fit therefore that the executive power should regulate the time of convening as well as the duration of those assemblies, according to the circumstances and exigencies of state known to itself.

Were the executive power not to have a right of putting a stop to the encroachments of the legislative body, the latter would become despotic; for as it might arrogate to itself what authority it pleased, it would soon destroy all the other powers.

But it is not proper on the other hand that the legislative power should have a right to stop the executive. For as the execution has its natural limits, it is useless to confine it; besides the executive power is generally employed in momentary operations. The power therefore of the Roman tribunes was faulty, as it put a stop not only to the legislation, but likewise to the execution itself; which was attended with infinite mischiefs.

But if the legislative power in a free government has no right to stay the executive, it has a right and ought to have the means of examining in what manner its laws have been executed; an advantage which this government has over that of Crete and Sparta, where the Cosmi and the Ephori gave no account of their administration.

But whatever may be the issue of that examination, the legislative body ought not to have a power of judging the person, nor of course the conduct of him who is intrusted with the executive power. His person should be sacred, because as it is necessary for the good of the state to prevent the legislative body from rendering themselves arbitrary, the moment he is accused or tried, there is an end of liberty.

In this case the state would be no longer a monarchy, but a kind of republican, tho' not a free, government. But as the person intrusted with the executive power cannot abuse it without bad counsellors, and such as hate the laws as ministers, tho' the laws favour them as subjects; these men may be examined and punished. An advantage which this government has over that of *Gnidus*, where the law allowed of no such thing as calling the *Amymones* * to an account, even after their administration †; and therefore the people could never obtain any satisfaction for the injuries done them.

Tho' in general the judiciary power ought not to be united with any part of the legislative, yet

* These were magistrates chosen annually by the people. See Stephen of Byzantium.

† It was lawful to accuse the Roman magistrates after the expiration of their several offices. See in Dionys. Halicarn. l. 9. the affair of *Genutius* the tribune.

this is liable to three exceptions founded on the particular interest of the party accused.

The great are always obnoxious to popular envy; and were they to be judged by the people, they might be in danger from their judges, and would moreover be deprived of the privilege which the meanest subject is possessed of in a free state, of being tried by their peers. The nobility for this reason ought not to be cited before the ordinary courts of judicature, but before that part of the legislature which is composed of their own body.

It is possible that the law, which is clear-sighted in one sense, and blind in another, might in some cases be too severe. But as we have already observed, the national judges are no more than the mouth that pronounces the words of the law, mere passive beings incapable of moderating either its force or rigor. That part therefore of the legislative body, which we have just now observed to be a necessary tribunal on another occasion, is also a necessary tribunal in this; it belongs to its supreme authority to moderate the law in favour of the law itself, by mitigating the sentence.

It might also happen that a subject intrusted with the administration of public affairs, may infringe the rights of the people, and be guilty of crimes which the ordinary magistrates either could not, or would not punish. But in general the legislative power cannot judge; and much less can it be a judge in this particular case, where it represents the party concerned, which is the people. It can only therefore impeach. But before what court shall it bring its impeachment? Must it go and demean itself before the ordinary tribunals, which are its inferiors,

inferiors, and being composed moreover of men who are chosen from the people as well as itself, will naturally be swayed by the authority of so powerful an accuser? No: in order to preserve the dignity of the people, and the security of the subject, the legislative part which represents the people, must bring in its charge before the legislative part which represents the nobility, who have neither the same interests nor the same passions.

Here is an advantage which this government has over most of the ancient republics, where there was this abuse, that the people were at the same time both judge and accuser.

The executive power, pursuant to what has been already said, ought to have a share in the legislature by the power of rejecting, otherwise it would soon be stripp'd of its prerogative. But should the legislative power usurp a share of the executive, the latter would be equally undone.

If the prince were to have a share in the legislature by the power of resolving, liberty would be lost. But as it is necessary he should have a share in the legislature for the support of his own prerogative, this share must consist in the power of rejecting.

The change of government at Rome was owing to this, that neither the senate who had one part of the executive power, nor the magistrates who were entrusted with the other, had the right of rejecting, which was intirely lodged in the people.

Here then is the fundamental constitution of the government we are treating of. The legislative body being composed of two parts, one checks the other, by the mutual privilege of rejecting. They

are both checked by the executive power, as the executive is by the legislative.

These three powers should naturally form a state of repose or inaction. But as there is a necessity for movement in the course of human affairs, they are forced to move, but still to move in concert.

As the executive power has no other part in the legislative than the privilege of rejecting, it can have no share in the public debates. It is not even necessary that it should propose, because as it may always disapprove of the resolutions that shall be taken, it may likewise reject the decisions on those proposals which were made against its will.

In some ancient commonwealths, where public debates were carried on by the people in a body, it was natural for the executive power to propose and debate with the people, otherwise their resolutions must have been attended with a strange confusion.

Were the executive power to determine the raising of public money, otherwise than by giving its consent, liberty would be at an end; because it would become legislative in the most important point of legislation.

If the legislative power was to settle the subsidies, not from year to year, but for ever, it would run the risk of losing its liberty, because the executive power would no longer be dependent; and when once it was possessed of such a perpetual right, it would be a matter of indifference, whether it held it of itself, or of another. The same may be said, if it should come to a resolution of intrusting, not an annual, but a perpetual command of the sea and land forces to the executive power.

To prevent the executive power from being able to oppress, it is requisite that the armies, with which it is intrusted, should consist of the people, and have the same spirit as the people, as was the case at Rome till the time of *Marius*. To obtain this end, there are only two ways, either that the persons employed in the army, should have sufficient property to answer for their conduct to their fellow subjects, and be enlisted only for a year, as was customary at Rome : or if there should be a standing army, composed chiefly of the most despicable part of the nation, the legislative power should have a right to disband them as soon as it pleased ; the soldiers should live in common with the rest of the people ; and no separate camp, barracks, or fortrefs, should be suffered.

When once an army is established, it ought not to depend immediately on the legislative, but on the executive power ; and this from the very nature of the thing ; its business consisting more in action than in deliberation.

From a manner of thinking that prevails amongst mankind, they set a higher value upon courage than timorousness, on activity than prudence, on strength than counsel. Hence the army will ever despise a senate, and respect their own officers. They will naturally slight the orders sent them by a body of men, whom they look upon as cowards, and therefore unworthy to command them. So that as soon as the army depends on the legislative body, the government becomes a military one ; and if the contrary has ever happened, it has been owing to some extraordinary circumstances. It is because the army was always kept divided ; it is because

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it was composed of several bodies, that depended each on their particular province; it is because the capital towns were strong places, defended by their natural situation, and not garrisoned with regular troops. Holland for instance, is still safer than Venice; she might drown, or starve the revolted troops; for as they are not quartered in towns capable of furnishing them with necessary subsistence; this subsistence is of course precarious.

Whoever shall read the admirable treatise of Tacitus on the manners of the Germans *, will find that it is from them the English have borrowed the idea of their political government. This beautiful system was invented first in the woods.

As all human things have an end, the state we are speaking of will lose its liberty, will perish. Have not Rome, Sparta, and Carthage perished? It will perish when the legislative power shall be more corrupt than the executive.

It is not my business to examine whether the English actually enjoy this liberty, or not. Sufficient it is for my purpose to observe, that it is established by their laws; and I inquire no further.

Neither do I pretend by this to undervalue other governments, nor to say that this extreme political liberty ought to give uneasiness to those who have only a moderate share of it. How should I have any such design, I who think that even the excess of reason is not always desirable, and that mankind generally find their account better in mediums than in extremes?

Harrington in his *Oceana* has also inquired into

* *De minoribus rebus principes consultant, de majoribus omnes; ita tamen ut ea quoque quorum penes plebem arbitrium est, apud principes pertractentur.* the

the highest point of liberty to which the constitution of a state may be carried. But of him indeed it may be said, that for want of knowing the nature of real liberty, he busied himself in pursuit of an imaginary one, and that he built a Chalcedon tho' he had a Byzantium before his eyes.

C H A P. VII.

Of the Monarchies we are acquainted with.

THE monarchies we are acquainted with, have not, like that we have been speaking of, liberty for their direct view : their only aim is the subject's, the state's, and the prince's glory. But from this glory there results a spirit of liberty, which in those states may perform as great things, and may contribute as much perhaps to happiness, as liberty itself.

Here the three powers are not distributed and founded on the model of the constitution above-mentioned ; they have each a particular distribution, according to which they border more or less on political liberty ; and if they did not border upon it, monarchy would degenerate into despotic government.

C H A P. VIII.

Why the ancients had not a clear Idea of Monarchy.

THE ancients had no notion of a government founded on a body of nobles, and much less on a legislative body composed of the representatives of the people. The republics of Greece and Italy were cities that had each their own form of government, and convened their subjects

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within their own walls. Before Rome had swallowed up all the other republics, there was scarce any where a king to be found, no, not in Italy, Gaul, Spain, or Germany; these were all petty states, or little republics. Even Africa itself was subject to a great republic: and Asia minor was occupied by Greek colonies. There was therefore no example of deputies of towns, or assemblies of the states; one must have gone as far as Persia to find a country under the government of a single person.

I am not ignorant that there were confederate republics; in which several towns sent deputies to an assembly. But I affirm there was no monarchy on the present model.

The first plan therefore of the monarchies we are acquainted with, was thus formed. The German nations that conquered the Roman empire, were, as is known to every one, a free people. Of this we may be convinced only by reading Tacitus *on the manners of the Germans*. The conquerors spread themselves all over the country; living mostly in the fields, and very little in towns. When they were in Germany, the whole nation was able to assemble. This they could no longer do, when they were dispersed through the conquered provinces. And yet as it was necessary that the nation should deliberate on public affairs, pursuant to their usual method before the conquest; they had therefore recourse to representatives. Such is the origin of the Gothic government amongst us. At first it was mixt with aristocracy and monarchy; a mixture attended with this inconveniency, that the common people were bond men. The custom afterwards succeeded of granting letters of enfranchisement, and
was

was soon followed by so perfect a harmony between the civil liberty of the people, the privileges of the nobility and clergy, and the prince's prerogative, that I really think there never was in the world a government so well tempered, as that of each part of Europe, so long as it lasted. Surprising, that the corruption of the government of a conquering nation, should have given birth to the best species of constitution that could possibly be imagined by man * !

C H A P. IX.

Aristotle's manner of thinking.

ARISTOTLE is greatly puzzled in treating of monarchy^(c). He makes five species; and he does not distinguish them by the form of constitution, but by things merely accidental, as the virtues or vices of the prince; or by things extrinsic, such as the usurpation of, or succession to, tyranny.

(c) Polit.
Book 3.
Chap. 14.

He ranks among the number of monarchies, the Persian empire and the kingdom of Sparta. But is it not evident, that one was a despotic state, and the other a republic?

The ancients who were strangers to the distribution of the three powers in the government of a single person, could never form a just idea of monarchy.

* It was a good government that had in itself a capacity of growing better.

CHAP. X.

What other Politicians thought.

BOOK
XI.
Chap. 10,
& 11.
(^d) See
Justin.
Book 17.
(^e) Arist.
Polit.
Book 5.
Chap. 8.

TO temper monarchy, Arybas king (^d) of Epirus, found no other remedy than a republic. The Molossi not knowing how to limit the same power made two kings(^e): by this means the state was weakened more than the prerogative of the prince; they wanted rivals, and they created enemies.

Two kings were tolerable no where but at Sparta; here they did not form, but were only a part of, the constitution.

CHAP. XI.

Of the Kings of the heroic Times of Greece.

(^f) Aristot.
Polit.
Book 3.
Chap. 14.

IN the heroic times of Greece, a kind of monarchy arose that was not of long duration(^f). Those who had been inventors of arts, who had fought in their country's cause, who had established societies, or distributed lands among the people; obtained the regal power, and transmitted it to their children. They were kings, priests, and judges. This is one of the five species of monarchy mentioned by Aristotle(^g); and the only one that can give us any idea of the monarchical constitution. But the plan of this constitution is opposite to that of our modern monarchies.

(^h) See
what Plu-
tarch says
in the Life
of Theseus.
See like-
wise Thu-
cydides.
Book 1.

The three powers were there distributed in such a manner as the people had the legislative(^h), and the king the executive together with the power of judging; whereas in modern monarchies the prince is

is invested with the executive and legislative powers, or at least with part of the legislative, but does not assume the power of judging. Book
XI.
Chap. II.

In the government of the kings of the heroic times, the three powers were ill distributed. Hence those monarchies could not long subsist. For as soon as the people got the legislative power into their hands, they might, as they every where did, upon the very least caprice, subvert the regal authority.

Among a free people possessed of the legislative power, a people enclosed within walls, where every thing of an odious nature becomes still more odious, it is the highest master-piece of legislation to know how to place properly the judiciary power. But it could not be in worse hands than in those of the person to whom the executive power had been already committed. From that very instant the monarch became terrible. But at the same time as he had no share in the legislature, he could make no defence against it; thus his power was in one sense too great, in another too little.

They had not as yet discovered that the true function of a prince was to appoint judges, and not to sit as judge himself. The opposite policy rendered the government of a single person insupportable. Hence all those kings were banished. The Greeks had no notion of the proper distribution of the three powers in the government of one person; they could see it only in that of many; and this kind of constitution they distinguished by the name of *Polity* ⁽¹⁾.

(1) *Aristot.*
Polit.
Book 4.
Chap. 8.

C H A P. XII.

Of the Government of the Kings of Rome, and in what manner the three powers were there distributed.

Book
XI.
Chap. 12.

THE government of the kings of Rome had some relation to that of the kings of the heroic times of Greece. Its subversion, like the latter's, was owing to its general defect, tho' in it self, and in its own particular nature, it was exceeding good.

In order to give an adequate idea of this government, I shall distinguish that of the five first kings, that of Servius Tullius, and that of Tarquin.

(^c) Dionys. Halicarn. book 2, p. 120. & book 4, p. 242, & 243.

The crown was elective, and under the five first kings the senate had the greatest share in the election.

(^d) See Tanaquil's discourse on Livy, book 1. dec. 1, and the regulation of Servius Tullius in Dionys. Halicarn. book 4, p. 229. (^e) See Dionys. Halicarn. book 2, p. 118, and book 3, p. 171.

Upon the king's decease the senate examined whether they should continue the established form of government. If they thought proper to continue it, they named a magistrate (^c) taken from their own body who chose a king; the senate were to approve of the election, the people to confirm it, and the augurs to declare the approbation of the Gods. If one of these three conditions was wanting, they were obliged to proceed to another election.

The constitution was a mixture of monarchy, aristocracy, and democracy; and such was the harmony of power, that there was no instance of jealousy or dispute in the first reigns. The king commanded the armies, and had the direction of the sacrifices; he had the power of determining (^d) civil and criminal (^e) causes; he called the se-

nate

nate together, convened the people, laid some affairs before the latter, and regulated the rest with the senate *.

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Chap. 12.

The authority of the senate was very great. The kings oftentimes pitched upon senators with whom they judged in conjunction; and they never laid any affair before the people, till it had been previously debated † in the senate.

The people had the right of chusing ‡ magistrates, of consenting to the new laws, and, with the king's permission, of making war and peace: But they had not the power of judging. When Tullus Hostilius referred the trial of Horatius to the people, he had his particular reasons, which may be seen in Dionysius Halicarnassæus (a).

(a) Book 3,

The constitution altered under (b) Servius Tullius. The senate had no share in his election; he caused himself to be proclaimed by the people; he resigned the power of judging civil causes ||, reserving none to himself but the criminal; he laid all affairs directly before the people; he eased them of taxes, and imposed the whole burthen on the Patricians. Hence in proportion as he weakened the regal together with the senatorian power, he augmented that of the people §.

P. 159.
(b) Dionys.
Halicarn.
book 4.

* It was by virtue of a senatus consultum that Tullus Hostilius ordered Alba to be destroyed. Dionys. Halicarn. book 3, p. 167, & 172.

† Ibid. book 4, p. 276.

‡ Ibid. book 2. And yet they could not have the nomination of all offices, since Valerius Publicola made that famous law by which every citizen was forbid to exercise any employment unless he had obtained it by the suffrage of the people.

|| He divested himself of half the regal power, says Dionys. Halicarn. book 4, p. 229.

§ It was thought that if he had not been prevented by Tarquin he would have established a popular government. Dionys. Halicarn. book 4, p. 243.

Tarquin

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XI.
Chap. 13.

(c) Dionys.
Halicarn.
book 4.

Tarquin would neither be chosen by the senate nor by the people; he considered Servius Tullius as an usurper, and took the crown as an hereditary right. He destroyed most of the senators; those who remained he never consulted; nor did he even so much as summon them to assist at his decisions (c). Thus his power increased: but the odium of that power received a new addition, by usurping also the authority of the people, without whom, and even against whom, he enacted several laws. The three powers were by this means reunited in his person; but the people at a critical minute recollected that they were legislators, and there was an end of Tarquin.

CHAP. XIII.

General reflexions on the state of Rome after the expulsion of its Kings.

IT is impossible ever to be tired with so agreeable a subject as ancient Rome; even at present strangers leave the modern palaces of that celebrated capital to go in search of ruins: thus the eye after resting itself on the enamelled meadows, is pleased with the sight of rocks and mountains.

The patrician families were at all times possessed of great privileges. These distinctions, which were considerable under the kings, became much more important after their expulsion. Hence arose the jealousy of the Plebeians who wanted to reduce them. The contest struck at the constitution without weakning the government: for it was very indifferent of what family were the magistrates, provided the magistracy preserved its authority.

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An elective monarchy like that of Rome, necessarily supposeth a powerful aristocratic body to support it; without which it changes immediately into tyranny or into a popular state. But a popular state has no need of this distinction of families to maintain itself. To this it was owing that the Patricians, who were a necessary part of the constitution under the regal government, became a superfluous branch under the consuls: the people could suppress them without hurting themselves, and change the constitution without corrupting it.

After Servius Tullius had reduced the Patricians, it was natural that Rome should fall from the regal hands into those of the people. But the people had no occasion to be afraid of relapsing under a regal power, by reducing the Patricians.

A state may alter two different ways, either by the amendment or by the corruption of the constitution. If it has preserved its principles and the constitution changes, it is owing to its amendment; if upon changing the constitution its principles are lost, it is because it has been corrupted.

Rome after the expulsion of the kings, should naturally have been a democracy. The people had already the legislative power in their hands; it was their unanimous consent that had expelled the kings; and if they had not continued steady in those principles, the Tarquins might easily have been restored. To pretend that their design in expelling them was to render themselves slaves to a few families, is quite unreasonable. The situation therefore of things required that Rome should be a democracy; and yet it was not. There was a ne-

cessity

cessity of tempering the power of the principal families, and of giving the laws a bias to democracy.

The prosperity of states is frequently greater in the insensible transition from one constitution to another, than in either of those constitutions. Then it is that all the springs of government are stretched, that every citizen forms pretensions, that the inhabitants attack or caress one another, and that there is a noble emulation between those who defend the declining, and those who are strenuous in promoting the new, constitution.

C H A P. XIV.

In what manner the distribution of the three Powers began to change after the Expulsion of the Kings.

TH E R E were four things that greatly oppressed the liberty of Rome. The Patricians had engrossed to themselves all sacred, political, civil and military employments; an exorbitant power was annexed to the consulate; the people were often insulted; and in fine they had scarce any influence at all left in the public suffrages. These four abuses were redressed by the people.

1st. It was regulated that there should be some magistracies to which the plebeians might aspire; and by degrees they obtained their being made capable of them all, except that of *Inter-rex*.

2^d. The consulate was dissolved into several other magistracies (°); prætors were created, on whom the power was conferred of judging private affairs; quæstors * were nominated for determining cri-

(°) Livy,
1 Decad.
book 6.

* *Quæstores parricidii*, Pomponius, leg. 2. ff. de orig. Jur. minal

minal causes; *Ædiles* were established for the civil administration; *treasurers* ^(c) were made who had the management of the public money; and in fine by the creation of *Censors* the consuls were divested of that part of the legislative power which regulates the morals of the citizens, and the momentary policy of the different bodies of the state. The chief privileges left them were to preside in the great meetings * of the people, to assemble the senate, and to command the armies.

Book
XI.
Chap. 14.
(c) Plu-
tarch *Life*
of Publi-
cola.

3^d. By the sacred laws *tribunes* were established, who had a power on all occasions of checking the encroachments of the patricians, and prevented not only particular, but likewise general injuries.

In fine the plebeians increased their influence in public decisions. The people of Rome were divided in three different manners, by centuries, by *curiæ*, and by tribes; and whenever they gave their votes, they were assembled and formed one of those three ways.

In the first the patricians, the leading men, the rich, the senate, which was very near the same thing, had almost the whole authority; in the second they had less; and less still in the third.

The division into centuries was a division rather of estates and fortunes, than of persons. The whole people were divided into a hundred and ninety-three centuries ^(d), which had each a single vote. The patricians and leading men composed the first ninety eight centuries; and the other ninety-five consisted of the remainder of the citizens. In this division therefore the patricians were masters of the suffrages.

(d) See Li-
vy book 1,
and Dio-
nyf. Hali-
carn. book
4, & 7.

In the division into *curiæ* ^(e), the patricians had not the same advantages: some however they had,

(e) Dio-
nyf. Hali-
carn. book
9. P. 598.

* *Comitiis centuriatis.*

BOOK
XI.
Chap. 15.

for it was necessary that the augurs should be consulted who were under the direction of the patricians; and no proposal could be made there to the people unless it had been previously laid before the senate and approved of by a *senatus-consultum*. But in the division into tribes they had nothing to do either with the augurs or with the decrees of the senate; and the patricians were excluded.

Now the people endeavoured constantly to have those meetings by *curia's* which had been customary by centuries; and by tribes, those they used to have before by *curia's*; by which means the direction of public affairs soon devolved from the patricians to the plebeians.

(b) Ibid.
book 7.

Thus when the plebeians obtained the power of judging the patricians, a power which commenced in the affair of Coriolanus (b), the plebeians insisted upon judging them by assemblies in tribes*, and not in centuries: and when the new magistra-

(c) Dionys.
Halicarn.
book 6, p.
410, &
411.

cies (c) of tribunes and *Ædiles* were established in favour of the people, the latter obtained that they should meet by *curia's* in order to nominate them; and after their power was quite settled, they gained

(d) See
Dionys.
Halicarn.
book 9,
p. 605.

(d) so far their point as to assemble by tribes to proceed to this nomination.

CHAP. XV.

In what manner Rome, while in the flourishing state of the republic, suddenly lost its liberty.

IN the heat of the contests between the patricians and the plebeians, the latter insisted upon

* Contrary to the ancient custom, as may be seen in Dionys. Halicarn. book 5, p. 320.

having

having fixt laws, to the end that the public judgments should no longer be the effect of a capricious will or of an arbitrary power. The senate after a great deal of resistance acquiesced; and decemvirs were nominated to compose those laws. It was thought proper to grant them an extraordinary power, because they were to give laws to parties whose views and interests it was almost impossible to unite. The nomination of all magistrates was suspended, and they were chosen in the comitia sole administrators of the republic. Thus they found themselves invested with the consular and the tribunitian power. By one they had the privilege of assembling the senate, by the other that of assembling the people. But they assembled neither senate nor people. Ten men only in the republic had the whole legislative, the whole executive, and the whole judiciary power. Rome saw herself enslaved by as cruel a tyranny as that of Tarquin. When Tarquin exercised his oppressions, Rome was seized with indignation at the power he had usurped; when the decemvirs exercised theirs, she was astonished at the power she had given.

What a strange system of tyranny! a tyranny carried on by men who had obtained the political and military power merely because of their knowledge in civil affairs; and who in the circumstances of that very time stood in need of the cowardice of the citizens to let themselves be insulted at home, and of their courage to protect them abroad?

The spectacle of Virginia's death, whom her father immolated to chastity and liberty, put an end to the power of the decemvirs. Every man became free, because every man had been injured; each shewed him-

self a citizen, because each had the tie of a parent. The senate and people resumed a liberty which had been committed to ridiculous tyrants.

No people were so easily moved with spectacles as the Romans. The impurpled body of Lucretia put an end to the regal government. The debtor who appeared in the public market place covered with wounds, caused an alteration in the form of the republic. The decemvirs owed their expulsion to the fight of Virginia. To condemn Manlius, it was necessary to keep the people from seeing the capitol. Cæsar's bloody garment flung Rome again into slavery.

C H A P. XVI.

Of the legislative Power in the Roman Republic.

THERE were no rights to contest, under the decemvirs : but upon the restoration of liberty, jealousies revived ; and as long as the patricians had any privileges left, they were sure to be stripped of them by the plebeians.

The mischief would not have been so great, had the plebeians been satisfied with depriving the patricians of their prerogatives ; but they also injured them as citizens. When the people assembled by curia's or centuries, they were composed of senators, patricians, and plebeians. In their disputes the plebeians gained this point ⁽ⁱ⁾, that they alone without patricians or senate should enact laws called plebiscita ; and the comitia in which they were made, had the name given them of comitia by tribes. Thus there were cases in which

(i) Dionys.
Halicarn.
Book II.
p. 725.

which the patricians * had no share in the legislative power, and † in which they were subject to the legislation of another body of the state. This was the highest extravagance of liberty. The people to establish a democracy, acted against the very principles of this government. One would have imagined that so exorbitant a power must have destroyed the authority of the senate. But Rome had admirable institutions. Two of these were especially remarkable; one by which the legislative power of the people was regulated, and the other by which it was limited.

The censors, and before them the consuls ‖, formed and created, as it were, every five years the body of the people; they exercised the legislation on the very body that was possessed of the legislative power. “*Tiberius Gracchus*, says Cicero, “*caused the freedmen to be admitted into the tribes of the city not by the force of his eloquence, but by a word, by a gesture; which had he not effected, the republic, whose drooping head we are at present scarce able to uphold, would not even exist.*”

On the other hand, the senate had the power of rescuing, as it were, the republic out of the hands of the people, by creating a dictator, before whom

* By the sacred laws the plebeians had a power of making the plebiscita by themselves, without admitting the patricians into their assembly. Dionys. Halicarn. Book 6. p. 410. & book 7. p. 430.

† By the law made after the expulsion of the decemvirs, the patricians were made subject to the plebiscita, tho’ they had not a right of voting there. Livy Book 3. and Dionys. Halicarn. Book 11. p. 725. This law was confirmed by that of Publius Philo the dictator, in the year of Rome 416. Livy Book 8.

‖ In the year 312. of Rome, the consuls performed still the business of surveying the people and their estates, as appears by Dionys. Halicarn. Book 11.

Book XI. the sovereign bowed his head, and the most popular
Chap. 17. laws were silent *.

C H A P. XVII.

Of the executive Power in the same Republic.

JEALOUS as the people were of their legislative power, yet they had no great jealousy of the executive. This they left almost intirely to the senate and to the consuls, reserving scarce any thing more to themselves, than the right of chusing the magistrates, and of confirming the acts of the senate and of the generals.

Rome whose passion was to command, whose ambition was to conquer, whose commencement and progress were one continued usurpation, had constantly affairs of the greatest weight upon her hands; her enemies were always conspiring against her, or she against her enemies.

As she was obliged to behave on the one hand with heroic courage, and on the other with consummate prudence; the situation of things required of course that the management of affairs should be committed to the senate. Thus the people disputed every branch of the legislative power with the senate, because they were jealous of their liberty; but they had no disputes about the executive, because they were jealous of their glory.

So great was the share the senate took in the executive power, that, as Polybius^(c) informs us, foreign nations imagined that Rome was an aristocracy. The senate disposed of the public money and farmed out

* Such as those by which it was allowed to appeal from the decisions of all the magistrates to the people.

the

the revenue; they were arbiters of the affairs of their allies; they determined war or peace, and directed in this respect the consuls; they fixed the number of the Roman and of the allied troops, disposed of the provinces and armies to the consuls or prætors, and upon the expiration of the year of command had the power of appointing successors; they decreed triumphs, received and sent embassies; they nominated, rewarded, punished, and were judges of kings; gave them, or declared they had forfeited, the title of allies of the Roman people.

The consuls levied the troops which they were to carry into the field; they had the command of the forces by sea and land; disposed of the allies; were invested with the whole power of the republic in the provinces; gave peace to the vanquished nations, imposed conditions on them, or referred them to the senate.

In the earliest times, when the people had some share in the affairs relating to war and peace, they exercised rather their legislative than their executive power. They scarce did any thing else but confirm the acts of the kings, and after their expulsion, of the consuls or senate. So far were they from being the arbiters of war, that we have instances of its having been often declared notwithstanding the opposition of their tribunes. But growing wanton in their prosperity, they increased their executive power. Thus they * created the mi-

* In the year of Rome 444. Livy 1. Decad. Book 9. As the war against Perseus appeared somewhat dangerous, it was ordained by a senatus-consultum, that this law should be suspended, and the people agreed to it. Livy Dec. 5. Book 2.

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Chap. 18.

litary tribunes, the nomination of whom till then had belonged to the generals; and some time before the first Punic war they decreed that themselves only should have the right † of declaring war.

C H A P. XVIII.

Of the judiciary Power in the Roman Government.

THE judiciary power was given to the people, to the senate, to the magistrates, and to particular judges. We must see in what manner it was distributed; beginning with their civil affairs.

The consuls had * the power of judging after the expulsion of the kings, as the prætors were judges after the consuls. Servius Tullius had divested himself of the judgment of civil affairs, which was not resumed by the consuls, except in † some very rare cases, for that reason called *extraordinary* ‖. They were satisfied with naming the judges, and with forming the several tribunals. By a discourse of *Appius Claudius*, in *Dionysius* ^(a) *Halicarnasseus*, it appears, that as early as the 259th year of Rome, this was looked upon as an established custom among the Romans, and it is not tracing it very high to refer it to *Servius Tullius*.

(a) Book 6.
p. 360.

† They extorted it from the senate, says *Freinshemius*, Dec. 2. Book 6.

* There is no manner of doubt but the consuls had the power of judging civil affairs before the creation of the prætors. See *Livy* Dec. 1. Book 2. p. 19. *Dionys. Halicarn.* Book 10. p. 627. and the same Book p. 645.

† The tribunes frequently judged by themselves only, but nothing rendered them more odious, *Dionys. Halicarn.* Book 11. p. 709.

‖ *Judicia extraordinaria.* See the *Institutes* Book 4.

Every

Every year the prætor made a list * of such as he chose to discharge the office of judges during his magistracy. A sufficient number was pitched upon for each cause; a custom very near the same as that which is now practised in England. And what was extremely favourable to liberty †, was the prætor's fixing the judges with the ‡ consent of the parties. The great number of exceptions that can be made now in England, amounts pretty near to this very custom.

The judges decided only the questions ^(m) relating to facts, for example, whether a sum of money had been paid or not, whether an act had been committed, or not. But as to questions of ⁽ⁿ⁾ right, as they required some sort of capacity, they were always carried before the tribunal of the centumvirs ||.

^(m) Seneca de Benefic. lib. 3. cap. 7. in fine.
⁽ⁿ⁾ See Quintilian lib. 4. p. 54. in fol. edit. of Paris, 1541.

The kings reserved to themselves the judgment of criminal affairs, and in this they were succeeded by the consuls. It was in consequence of this authority that *Brutus* the consul put his children and all those who were concerned in the Tarquinian conspiracy to death. This was an exorbitant power. The consuls already invested with the military command, extended the exercise of it even to civil affairs; and their procedures being

* *Album Judicium.*

† “ Our ancestors, says *Cicero pro Cluentio*, would not suffer any man, whom the parties had not agreed to, to be judge of the least pecuniary affair, much less of a citizen's reputation.”

‡ See in the fragments of the *Servilian*, *Cornelian*, and other laws, in what manner these laws appointed judges for the crimes they proposed to punish. They were often by choice, sometimes by lot, or in fine by lot mixt together with choice.

|| *Leg. 2. ff. de Orig. Jur.* Magistrates who were called decemvirs presided in court, the whole under a prætor's direction.

stripped

stripped of all forms of justice, were rather exertions of violence than legal judgments.

This gave rise to the *Valerian* law, by which it was made lawful to appeal to the people from every ordinance of the consuls that endangered the life of a citizen. The consuls after this had no longer a power of pronouncing sentence in capital cases against a Roman citizen without the consent of the people*.

We see in the first conspiracy for the restoration of the Tarquins, that the criminals were tried by Brutus the consul; in the second the senate and

(^o) Dionys.
Halicarn.
Book 5.
p. 322.

comitia were assembled to try them (^o). The laws distinguished by the name of *Sacred*, allowed the plebeians the privilege of choosing tribunes; by this means a body was formed, whose pretensions at first were immense. It is hard to determine which was greater, the insolence of the plebeians in demanding, or the condescension of the senate in granting. The *Valerian* law allowed of appeals to the people, that is, to the people composed of senators, patricians, and plebeians. The plebeians made a law that appeals should be brought before themselves. A question was soon after started, whether the plebeians had a right to judge a patrician; this was the subject of a dispute which the affair of Coriolanus gave rise to, and which ended with that affair. When Coriolanus was accused by the tribunes before the people, he insisted contrary to the spirit of the *Valerian* law, that as he was a patrician, none but the consuls had a power

* Quoniam de capite civis Romani, injussu populi Romani, non erat permillum consulibus jus dicere. See *Pomponius Leg. 2. ff. de orig. jur.*

to judge him; on the other hand, the plebeians also contrary to the spirit of that very same law pretended that none but themselves had a power to judge him, and they judged him accordingly.

This was moderated by the law of the twelve tables; whereby it was ordained that none but the *great assemblies* of the people * should pronounce sentence against a citizen in capital cases. Hence the body of the plebeians, or which amounts to the very same, the comitia by tribes, had no longer any power of judging crimes, except such as were punished with a pecuniary mulct. To inflict a capital punishment a *law* was requisite; but to condemn to a pecuniary fine, there was occasion only for a *Plebiscitum*.

This regulation of the law of the twelve tables was very prudent. It produced an admirable reconciliation between the body of the plebeians and the senate. For as the full judiciary power of both depended on the greatness of the punishment and the nature of the crime, it was necessary they should both agree.

The Valerian law abolished all the remains of the Roman government, which were any way relative to that of the kings of the heroic times of Greece. The consuls were divested of the power to punish crimes. Though all crimes are public, yet we must distinguish between those which more nearly concern the mutual communication of citizens, and those which more nearly interest the state in the relation it has to its subjects. The first are called private, the second public. The latter were judged

* The Comitia by centuries. Thus Manlius Capitolinus was judged in these Comitia. Livy Dec. 1. Book 6. p. 60.

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by the people; and in regard to the former, they named by particular commission a quæstor for the prosecution of each crime. The person chosen by the people was frequently one of the magistrates, and sometimes a private man. He was called the *quæstor of Parricide*, and is mentioned in the law

(^f) *Pomponius*, in the second

Law in
the Digest
de Orig.
Jur.

of the twelve tables (^f). The quæstor nominated the judge of the question, drew lots for the judges, formed the tribunal, under which he presided*.

Here it is proper to observe what share the senate had in the nomination of the quæstor, that we may see how far the two powers were balanced in this respect. Sometimes the senate caused a dictator to be chosen in order to exercise the office of quæstor†; sometimes they ordained that the people should be convened by a tribune in order to proceed to the nomination of a quæstor‡: and in fine the people sometimes appointed a magistrate to make his report to the senate concerning a particular crime, and to desire them to name a quæstor, as may be seen in the judgment of *Lucius Scipio* § in Livy (§).

(^g) Book 8. In the year of Rome 604 some of these commissions were rendered permanent (^h). All criminal causes were gradually divided into different parts; to which they gave the name of *perpetual*

(^b) Cicero
in Bruto.

* See a fragment of Ulpian, who gives another of the Cornelian law, it is to be met with in the *Collation of the Mosaic and Roman laws*, tit. 1, de sicariis & homicidiis.

† This took place especially in regard to crimes committed in Italy, which were subject chiefly to the inspection of the senate. See Livy 1, Dec. book 9, concerning the conspiracies of Capua.

‡ This was the case in the prosecution for the murder of Poethumius, in the year 340 of Rome. See Livy.

§ This judgment was given in the year of Rome 567.

questions.

questions. Different prætors were created, to each of whom some of those questions were assigned. They had a power conferred upon them for the term of a year, of judging such crimes as were any way relative to those questions, and then they were sent to govern their province.

At Carthage the senate of the hundred was composed of judges who enjoyed that dignity for life*. But at Rome the prætors were annual, and the judges were not even for so long a term, but were nominated for each cause. We have already shewn in the sixth chapter of this book how favourable this regulation was to liberty in particular governments.

The judges were chosen from the order of senators, till the time of the Gracchi. *Tiberius Gracchus* caused a law to pass that they should be taken from the Equestrian order; a change so very considerable that the tribune boasted of having cut by one *rogation* only the sinews of the senatorian dignity.

It is necessary to observe that the three powers may be very well distributed in regard to the liberty of the constitution, tho' not so well in respect to the liberty of the subject. At Rome the people had the greatest share of the legislative, a part of the executive, and part of the judiciary power; by which means they had so great a weight in the government, as required some other power to balance it. The senate indeed had part of the executive power, and some share of the legislative†; but

* This is proved from Livy, book 43, who says that Hannibal rendered their magistracy annual.

† The *senatus-consultums* were of force for the space of a year, tho' not confirmed by the people. Dionys. Halicarn. book 9, p. 595, and book 11, p. 735.

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(^h) In the
year 630.

this was not sufficient to counter-balance the weight of the people. It was necessary that they should have a share in the judiciary power; and accordingly they had a share when the judges were chosen from among the senators. But when the Gracchi deprived the senators of the power of judging (^h), the senate were no longer able to withstand the people. To favour therefore the liberty of the subject they struck at the liberty of the constitution: but the former perished with the latter.

Infinite were the mischiefs that from thence arose. The constitution was changed at a time when the fire of civil discords had scarce left any such thing as a constitution. The knights were no longer that middle order which united the people to the senate; the chain of the constitution was broke.

There were even particular reasons against transferring the judiciary power to the equestrian order. The Constitution of Rome was founded on this principle, that none should be enlisted as soldiers but such as were men of sufficient property to answer for their conduct to the republic. The knights as persons of the greatest property formed the cavalry of the legions. But when their dignity increased, they refused to serve any longer in that capacity; and another kind of cavalry was obliged to be raised: thus Marius enlisted all sorts of people into his army, and soon after the republic was lost (ⁱ).

(ⁱ) *Capite
censos ple-
rosque Sal-
lust. de
bello Ju-
gurth.*

Besides, the knights were the farmers of the public revenues; a set of rapacious men; who sowed new miseries amongst a miserable people, and made a sport of the public calamity. Instead of giving to such men as those the power of judging, they ought to have been constantly under the eye of the judges.

judges. This we must say in commendation of the ancient French laws; they have stipulated with the officers of the revenues, with as great a diffidence as would be observed between enemies. When the judiciary power at Rome was transferred to the farmers of the revenues, there was then an end of virtue, policy, laws, magistracy, and magistrates.

Of this we find a very ingenuous description in some fragments of Diodorus Siculus and Dio.

" *Mutius Scevola*, says DIODORUS ⁽¹⁾, *wanted to revive the ancient morals, and the laudable custom of sober and frugal living. For his predecessors having entered into a contract with the farmers of the revenue who at that time were possessed of the judiciary power at Rome, they had filled the province with all manner of crimes. But Scevola made an example of the publicans, and imprisoned those who had sent others to prison.*

(1) Fragment of this author book 36, in the collection of Constantine Porphyrogenitus of virtues and vices.

Dio informs us ^(m), that Publius Rutilius his lieutenant, was equally obnoxious to the equestrian order, and that upon his return they accused him of having received some presents, and condemned him to a fine; upon which he instantly made a cession of his goods. His innocence appeared in this, that he was found to be worth a great deal less than what he was charged with having extorted, and that he shewed a just title to what he possessed: but he would not live any longer in the same city with such profligate wretches.

(m) Fragment of his history, taken from the *Extract of virtues and vices.*

(n) The Italians, says DIODORUS again, bought up whole droves of slaves in Sicily, to till their lands and to take care of their cattle; but refused them a necessary subsistence. These wretches were then

(n) Fragment of the 34th book in the *Extract of virtues and vices.*

forced

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forced to go and rob on the high ways, armed with lances and clubs, covered with beasts skins, and followed by large mastiff dogs. Thus the whole province was laid waste, and the inhabitants could not call any thing their own, but what was secured within the walls of towns. There was neither proconsul nor prætor, that could or would oppose this disorder, or that presumed to punish these slaves, because they belonged to the knights, who at Rome were possessed of the judiciary power *. And yet this was one of the causes of the war of the slaves. But I shall add only one word more. A profession that neither has nor can have any other view than lucre, a profession that was always forming fresh demands without ever granting any, a deaf and inexorable profession that impoverished the rich and increased even the misery of the poor, such a profession, I say, should never have been entrusted with the judiciary power at Rome.

CHAP. XIX.

Of the Government of the Roman Provinces.

SUCH was the distribution of the three powers in Rome. But they were far from being thus distributed in the provinces: Liberty was at the center, and tyranny in the extreme parts.

While Rome extended her dominions no farther than Italy, the people were governed as confederates; and the laws of each republic were preserved. But as soon as she enlarged her conquests, and

* Penes quos Romæ tum judicia erant, atque ex equestri ordine solerent sortito judices eligi in causa Prætorum & Proconsulum quibus post administratam provinciam dies dicta erat.

the senate had no longer an immediate inspection over the provinces, nor the magistrates residing at Rome were any longer capable of governing the empire, they were obliged to send prætors and proconsuls. Then it was that the harmony of the three powers was lost. Those who were sent on that errand, were intrusted with a power which comprehended that of all the Roman magistracies; nay even that of the people *. They were despotic magistrates, extremely proper for the distance of the places to which they were sent. They exercised the three powers; being, if I may presume to use the expression, the bashaws of the republic.

We have elsewhere observed that in a commonwealth the same magistrate ought to be possessed of the executive power, as well civil as military. To this it is owing that a conquering republic can hardly communicate her government, and rule the conquered state according to the form of her own constitution. In fact as the magistrate she sends to govern, is invested with the executive power, both civil and military, he must also have the legislative: for who is it that could make laws without him? He must likewise have the judiciary power: for who could pretend to judge independently of him? It is necessary therefore that the governor she sends be intrusted with the three powers, as was practised in the Roman provinces.

It is more easy for a monarchy to communicate its government, because the officers it sends, have, some the civil executive, and others the military executive power; which does not necessarily imply a despotic authority.

* They made their edicts upon coming into the provinces.

THE SPIRIT

It was a privilege of the utmost consequence to a Roman citizen, to have none but the people for his judges. Were it not for this, he would have been subject in the provinces to the arbitrary power of a proconsul or of a proprætor. The city never felt the tyranny, which was exercised only on conquered nations.

Thus in the Roman world, as at Sparta, those who were free were extremely so, while those who were slaves laboured under the extremity of slavery.

While the citizens paid taxes, they were raised with great justice and equality. The regulation of Servius Tullius was observed, who had distributed the people into six classes according to their difference of property, and fixed the several shares of the public taxes in proportion to that which each person had in the government. Hence they bore with the greatness of the tax because of their proportionable greatness of credit, and consoled themselves for the smallness of their credit, because of the smallness of the tax.

There was also another thing worthy of admiration, which is, that as Servius Tullius's division into classes was in some measure the fundamental principle of the constitution, it thence followed that an equal levying of the taxes was so connected with this fundamental principle, that the one could not be abolished without the other.

But while the city paid the taxes as she pleased, or paid none at all *, the provinces were plundered by the knights who were the farmers of the public revenues. We have already made mention of

* After the conquest of Macedonia the Romans paid no taxes.

their oppressive extortions, with which all history abounds.

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Chap. 20.

(^c) Speech taken from Pro-
gus Tom-
peius, and
related by
Justin,
book 38.

(^d) See the
orations
against
Verres.

" *All Asia, says Mithridates (^c), expects me as its deliverer; so great is the hatred which the rapaciousness of the proconsuls (^d), the confiscations made by the officers of the revenue, and the quirks and cavils of judicial proceedings †, have excited against the Romans.*"

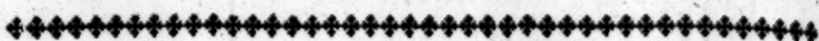
Hence it was that the strength of the provinces made no addition to, but rather weakened the strength of the republic. Hence it was that the provinces looked upon the loss of the liberty of Rome as the epocha of their own freedom.

C H A P. XX.

End of this Book.

I Should be glad to inquire into the distribution of the three powers, in all the moderate governments we are acquainted with, and to calculate thereby the degrees of liberty which each may enjoy. But we must not always exhaust a subject so far, as to leave no work at all for the reader. My business is not to make people read, but to make them think.

† It is well known what sort of a tribunal was that of Varus, which provoked the Germans to revolt.



B O O K XII.

*Of the Laws that form political Liberty
as relative to the Subject.*

C H A P. I.

Idea of this B O O K.

B O O K
XII.
Chap. I.

IT is not sufficient to have treated of political liberty as relative to the constitution; we must examine it likewise in the relation it bears to the subject.

We have observed that in the first case it is formed by a certain distribution of the three powers: but in the second we must consider it under another idea. It consists in security, or in the opinion people have of their security.

The constitution may happen to be free, and the subject not. The subject may be free, and not the constitution. In those cases, the constitution will be free by right and not in fact, the subject will be free in fact and not by right.

It is the disposition only of the laws, and even of the fundamental laws, that constitutes liberty in its relation to the constitution. But as it relates to the subject; morals, customs, or received examples may give rise to it, and particular civil laws may favour it, as we shall presently see in this book.

Farther, as in most states, liberty is more checked or depressed than their constitution demands, it is proper to treat of the particular laws that

that in each constitution are apt to assist or check the principle of liberty, which each state is capable of receiving.

BOOK
XII.
Chap. 2.

C H A P. II.

Of the Liberty of the Subject.

PHilosophical liberty consists in the free exercise of the will ; or at least, if we must speak agreeably to all systems, in an opinion that we have the free exercise of our will. Political liberty consists in security, or at least in the opinion that we enjoy security.

This security is never more dangerously attacked than in public or private accusations. It is therefore on the goodness of criminal laws that the liberty of the subject principally depends.

Criminal laws did not receive their full perfection all at once. Even in places where liberty has been most sought after, it has not been always found. Aristotle (^p) informs us that at Cumæ, the parents of the accuser might be witnesses. So imperfect was the law under the kings of Rome, that Servius Tullius pronounced sentence against the children of Ancus Martius, who were charged with having assassinated the king his father-in-law (^q). Under the first kings of France, Clotarius made a law (^r) that no body should be condemned without being heard ; which shews that a contrary custom had prevailed in some particular case or among some barbarous people. It was Charondas that first established penalties against false witnesses (^f). When the subject has no fence to secure his innocence, he has none for his liberty.

(^p) Politics
book 2.

(^q) Tar-
quinius
Priscus.

See Dio-
nysius Ha-
licarn.

book 4.

(^r) As ear-
ly as the
year 560.

(^f) Aristot.
Polit.

book 2.

chap. 12.

He gave
his laws at

Thurium
in the

84th O-
lympiad.

BOOK
XII.
Ch. 3, & 4.

The knowledge already acquired in some countries, or that may be hereafter attained in others, in regard to the surest rules that can be observed in criminal judgments, is more interesting to mankind than any other thing in the universe.

Liberty can only be founded on the practice of this knowledge: and supposing a state to have the best laws imaginable in this respect, a person tried under that state, and condemned to be hanged the next day, would have much more liberty, than a bashaw enjoys in Turkey.

CHAP. III.

The same Subject continued.

THOSE laws which condemn a man to death on the deposition of a single witness, are fatal to liberty. In right reason there should be two, because a witness who affirms, and the accused who denies, make an equal balance, and a third must incline the scale.

(i) See
Aristid.
Orat. in
Minervam.
(k) Dionys.
Halicarn.
on the
judgment
of Corio-
lanus,
book 7.

The Greeks (i) and Romans (k) required one voice more to condemn: but our French laws insist upon two. The Greeks pretend that their custom was established by the Gods *; but this more justly may be said of ours.

Deut. xviii. 6 - xix. 15

CHAP. IV.

That Liberty is favoured by the nature and proportion of Punishments.

LIBERTY is in its highest perfection, when criminal laws derive each punishment from the particular nature of the crime. There are then

* *Minervæ calculus.*

*See
Bentham's
Works
vol. 1. p. 92*

no arbitrary decisions; the punishment does not flow from the capriciousness of the legislator, but from the very nature of the thing; and man uses no violence to man.

There are four sorts of crimes. Those of the first species are prejudicial to religion, the second to morals, the third to the public tranquillity, and the fourth to the security of the subject. The punishments inflicted for these crimes ought to proceed from the nature of each of these species.

In the class of crimes that concern religion, I rank only those which attack it directly, such as all simple sacrileges. For as to crimes that disturb the exercise of it, they are of the nature of those which prejudice the tranquillity or security of the subject, and ought to be referred to those classes.

In order to derive the punishment of simple sacrileges from the nature of the thing†, it should consist in depriving people of the advantages conferred by religion, in expelling them out of the temples, in a temporary or perpetual exclusion from the society of the faithful, in shunning their presence, in execrations, detestations, and conjurations.

In things that prejudice the tranquillity or security of the state, secret actions are subject to human jurisdiction. But in those which offend the Deity, where there is no public action, there can be no criminal matter; the whole passes betwixt man and God, who knows the measure and time of his vengeance. Now if magistrates, confounding things, should inquire also into hidden sacrileges, this inqui-

† St. Lewis made such severe laws against those who swore, that the pope thought himself obliged to admonish him for it. This prince moderated his zeal, and softened his laws (*).

(*) See his Ordinances.

fiction would be directed to a kind of action that does not at all require it; the liberty of the subject would be subverted by arming the zeal of timorous, as well as of presumptuous consciences against him.

The mischief arises from a notion which some people have entertained of revenging the cause of the Deity. But we must honor the Deity, and leave him to avenge his own cause. In effect, were we to be directed by such a notion, where would be the end of punishments? If human laws are to avenge the cause of an infinite Being, they will be directed by his infinity, and not by the ignorance and caprice of man.

(†) Father
Bougerel.

An historian (†) of Provence relates a fact, which furnishes us with an excellent description of the consequences that may arise in weak capacities from this notion of avenging the Deity's cause. A Jew was accused of having blasphemed against the blessed Virgin; and upon conviction, was condemned to be fied alive. A strange spectacle was then seen: gentlemen masked, with knives in their hands, ascended the scaffold, and drove away the executioner, in order to be the avengers themselves of the honour of the blessed Virgin.—I do not here chuse to anticipate the reflections of the reader.

The second class consists of those crimes which are prejudicial to morals. Such is the violation of public or private continency, that is, of the policy directing the manner in which the pleasure annexed to the union of bodies is to be enjoyed. The punishment of those crimes ought to be also derived from the nature of the thing; the privation of such advantages as society has attached to the purity of morals,

morals, fines, shame, necessity of concealment, public infamy, expulsion from home and society, and in fine all such punishments as belong to a corrective jurisdiction, are sufficient to repress the temerity of the two sexes. In effect, these things are less founded on malice, than on oblivion and self contempt.

We speak here of none but crimes that relate merely to morals, for as to those that are also prejudicial to the public security, such as rapes and ravishments, they belong to the fourth species.

The crimes of the third class are those that disturb the public tranquillity. The punishments ought therefore to be derived from the nature of the thing, and to be relative to this tranquillity; such as imprisonment, exile, corrections, and other-like chastisements, proper for reclaiming turbulent spirits, and reducing them to the established order.

I confine those crimes that injure the public tranquillity to things that imply a simple transgression against the civil administration: for as to those which by disturbing the public tranquillity attack at the same time the security of the subject, they ought to be ranked in the fourth class.

The punishments inflicted upon the latter crimes are such as are properly distinguished by that name. They are a kind of retaliation, by which the society refuses security to a member, who has actually or intentionally deprived another of his security. These punishments are derived from the nature of the thing, founded on reason, and drawn from the very source of good and evil. A man deserves death when he has violated the security so far as to deprive, or to attempt to deprive another man of his life. This punishment of death is the remedy, as it were,

were, of a sick society. When there is a breach of security in respect to property, there may be some reasons for inflicting a capital punishment: but it would be much better, and perhaps more natural, that crimes committed against the security of property should be punished with the loss of property; and this ought indeed to be the case if mens fortunes were common or equal. But as those who have no property are generally the readiest to attack the property of others, it has been found necessary, instead of a pecuniary, to substitute a corporal punishment.

All that I have here advanced, is founded in nature, and extremely favourable to the liberty of the subject.

CHAP. V.

Of certain Accusations that require particular Moderation and Prudence.

IT is an important *maxim*; that we ought to be very circumspect in the prosecution of magic and heresy. The accusation of these two crimes may be vastly injurious to liberty, and productive of an infinite number of oppressions, if the legislator knows not how to set bounds to it. For as it does not aim directly at a person's actions, but at his character, it grows dangerous in proportion to the ignorance of the people; and then a man is always in danger, because the most unexceptionable conduct, the purest morals, and the constant practice of every duty in life, are not a sufficient security against the suspicion of his being guilty of crimes like these.

Under

Under Manuel Comnenus, the *Protestator* (°) was accused of having conspired against the emperor, and of having employed for that purpose some secrets that render men invifible. It is mentioned in the life of this emperor (d) that *Aaron* was detected, as he was poring over a book of Solomon's, the reading of which was fufficient to conjure up whole legions of devils. Now by fupposing a power in magic to arm all hell, people look upon a man whom they call a magician as the fitteft perfon in the world to trouble and fubvert fociety, and of courfe they are difpofed to punifh him with the utmoft feverity.

But their indignation increafes when magic is fupposed to have a power of fubverting religion. The hiftory of Conftantinople (°) informs us, that in confequence of a revelation made to a bifhop of a miracle's having ceafed becaufe of the magic practices of a certain perfon, both that perfon and his fon were put to death. On how many furprizing things did not this fingle crime depend? That revelations fhould not be uncommon, that the bifhop fhould be favoured with one, that it was real, that there had been a miracle in the cafe, that this miracle had ceafed, that there was an art magic, that magic could fubvert religion, that this particular perfon was a magician, and in fine, that he had committed that action of magic.

The emperor *Theodorus Lafcaris* attributed his illnefs to magic. Thofe who were accused of this crime, had no other refource left than to handle a hot iron without being hurt. Thus among the Greeks a perfon ought to have been a magician to be able to clear himfelf of the imputation of magic.

Such

Book
XII.
Chap. 5.
(°) *Nicetas*,
life of Ma-
nuel Com-
nenus,
Book 4.
(d) *Ibid*.

(°) *Hiftory*
of the em-
peror.
Maurice
by *Theo-*
phylactus,
Chap. II.

Book
XII.
Chap. 6.

Such was the excess of their stupidity, that to the most dubious crime in the world, they joined the most dubious proofs of innocence.

Under the reign of *Philip the Long*, the Jews were expelled from France, being accused of having poisoned the springs with their lepers. So absurd an accusation ought very well to make us doubt of all those that are founded on public hatred.

I have not here asserted that heresy ought not to be punished; I said only that we ought to be extremely circumspect in punishing it.

CHAP. VI.

Of the Crime against Nature.

GOD forbid that I should have the least inclination to diminish the horror people have for a crime which religion, morality, and civil government equally condemn. It ought to be proscribed were it only for its communicating to one sex the weaknesses of the other, and for leading people by a scandalous prostitution of their youth, to an ignominious old age. What I shall say concerning it will no ways diminish its infamy, being levelled only against the tyranny that may abuse the very horror we ought to have for the vice.

As the nature of this crime is secrecy, there are frequent instances of its having been punished by legislators upon the deposition of a child. This was opening a very wide door to calumny. “*Justinian, says Procopius^(f), published a law against this crime; he ordered an enquiry to be made not only against those who were guilty of it, after the enacting of that law, but even before. The deposition*

(^f) Secret
History.

*"fition of a single witness, sometimes of a child,
 "sometimes of a slave, was sufficient, especially
 "against such as were rich, and against those that
 "were of the green faction".*

It is very odd that these three crimes, magic, heresy, and that against nature, of which the first might easily be proved not to exist at all; the second to be susceptible of an infinite number of distinctions, interpretations, and limitations; the third to be often obscure and uncertain; it is very odd, I say, that these three crimes should amongst us be punished with fire.

I may venture to affirm that the crime against nature will never make any great progress in society, unless people find themselves induced to it in other respects by some particular custom, as among the Greeks where the young people performed all their exercises naked, as amongst us where domestic education is disused, as among the Asiatics where particular persons have a great number of women whom they despise, while others can have none at all. Let there be no customs preparatory to this crime, let it, like every other violation of morals, be severely proscribed by the civil magistrate, and nature will soon be seen to defend or resume her rights. Nature, that tender, amiable, and loving parent, has strewed her pleasures with a bounteous hand, and while she fills us with delights, she prepares us for future satisfactions of a more exquisite kind than those delights themselves.

Of the Crime of high Treason.

BOOK
XII.
Ch. 7. & 8.

IT is determined by the laws of China, that who-
soever shews any disrespect to the emperor, is
to be punished with death. As they do not men-
tion in what this disrespect consists, every thing may
furnish a pretext to take away a man's life, and to
exterminate any family whatsoever.

Two persons of that country, who were em-
ployed to write the court gazette, having inserted
some circumstances relating to a certain fact, that
were not true; it was pretended that to tell a lye
in the court gazette, was a disrespect shewn to the
court, in consequence of which they were put to
death^(g). A prince of the blood having inadver-
tently made some mark on a memorial signed with
the red pencil by the emperor, it was determined
that he had behaved disrespectfully to that prince;
which was the cause of one of the most terrible per-
secutions against that family that ever was recorded
in history^(h).

(g) Father
Du Halde,
Tom. 1.
P. 43.

(h) Father
Parennin
in the
edifying
letters.

(i) Book
29.

If the crime of high treason be indeterminate,
this alone is sufficient to make the government dege-
nerate into arbitrary power. I shall descant more
largely on this subject, when I come to treat⁽ⁱ⁾ of
the composition of laws.

*Of the bad Application of the Name of Sacrilege
and high Treason.*

IT is likewise a shocking abuse to give the ap-
pellation of high treason to an action that does
not

not deserve it. It was decreed by an imperial law *, that those who called in question the prince's judgment, or doubted of the merit of such as he had chosen for a public office, should be prosecuted as guilty of sacrilege †. Surely it was the cabinet council and the favourites of the court who invented that crime. By another law it was determined, that whosoever made any attempt against the ministers and officers of the prince should be deemed guilty of high treason, as if he had attempted against the prince himself ^(k). This law is owing to two princes ^(l), celebrated in history for their weakness; princes who were led by their ministers as flocks by shepherds; princes who were slaves in the palace, children in the council, strangers to the army; princes in fine, who preserved their authority only by giving it away every day. Some of those favourites conspired against their emperors. Nay, they did more, they conspired against the empire; they called in barbarous nations; and when the emperors wanted to stop their progress, the state was so enfeebled, as to be under a necessity of infringing their law, and of exposing itself to the crime of high treason in order to punish those favourites.

^(k) The 5th law *ad leg. Jul. Maj.*

^(l) Arcadius & Honorius.

And yet this is the very law which the judge of Monsieur de Cinq-Mars built upon ^(m), when endeavouring to prove that the latter was guilty of the crime of high treason for attempting to remove Cardinal Richelieu from the ministry, he says, "*Crimes that aim at the persons of ministers, are*

^(m) Memoirs of Montresor Tom. 1.

* Gratian, Valentinian, and Theodosius. This is the second in the *Code de Crimin. Sacril.*

† *Sacrilegii instar est dubitare an is dignus sit quem elegerit Imperator.* *ibid.* This law served as a model to that of Roger in the constitutions of Naples, Tit. 4.

" deemed

BOOK
XII.
Chap. 9.

(ⁿ) *Nam ipsi pars corporis nostri sunt.* The same law of the Code *ad leg. Jul. Maj.*
(^o) It is the 9th of the Code Theodos. *de falsâ monetâ.*

“ deemed by the Imperial constitutions, of equal consequence with those which are levelled against the emperor’s own person. A minister discharges his duty to his prince and to his country; to attempt therefore to remove him, is endeavouring to deprive the former of one of his arms (ⁿ), and the latter of part of its power.” If even slavery herself was to descend upon the earth, she could not speak in any other language.

By another law of Valentinian, Theodosius, and Arcadius (^o), false coiners are declared guilty of high treason. But is not this confounding the ideas of things? Is not the very horror of high treason diminished, by giving that name to another crime?

CHAP. IX.

The same Subject continued.

PAULINUS having wrote to the emperor Alexander, that “ he was preparing to prosecute for high treason, a judge who had decided contrary to his edict.” The emperor answered, “ that under his reign there was no such thing as indirect high treason *.”

Faustinian wrote to the same emperor, that as he had sworn by the prince’s life never to pardon his slave, he found himself thereby obliged to perpetuate his wrath lest he should incur the guilt of high treason. Upon which the emperor made answer, “ Your fears are groundless †, and you are a stranger to my principles.”

* *Etiam ex aliis causis majestatis crimina cessant meo sæcula.* Leg. 1. eod. ad leg. Jul. Maj.

† *Alienam seclæ meæ sollicitudinem concepisti.* Leg. 2. eod. ad leg. Jul. Maj.

It was determined by a senatus-consultum ^(p), Book XII.
 that whosoever melted down any of the emperor's statues which should happen to be rejected, should ^(p) See the
 not be deemed guilty of high treason. The em- ^{4th law in ff. ad leg. Jul. Maj.}
 perors Severus and Antoninus wrote to Pontius ^(q); ^(q) See the
 that those who sold unconsecrated statues of the em- ^{5th law, ibid.}
 peror, should not be charged with high treason. The same princes wrote to Julius Cassianus that if any
 person when flinging a stone should by chance strike one of the emperor's statues, he should not be liable
 to a prosecution of high treason ^(r). The Julian law ^(r) Ibid.
 requires this sort of limitations; for in virtue of this law the crime of high treason was charged not only
 upon those who melted down the emperor's statues, but likewise on those who committed any such like
 action ^(s), which made it an arbitrary crime. When ^(s) *Aliudve
quid simile
admiserint*
 a number of crimes of high treason had been esta- ^{Leg. 6 ff. ad leg. Jul. Maj.}
 blished, they were obliged to distinguish the several
 sorts. Hence Ulpian the civilian, after saying that the accusation of high treason did not die with the
 criminal, he adds, that this does not relate to ^(t) ^(t) In the
 all the treasonable acts established by the Julian law, ^{last law in ff. ad leg. Jul. de Adulteriis.}
 but only to that which implies an attempt against the empire or against the emperor's life.

C H A P. X.

The same Subject continued.

TH E R E was a law passed in England under Henry VIII. by which whosoever predicted the king's death, was declared guilty of high treason. This law was very indeterminate; the terror of despotic power is so great, that it even turns against those who exercise it. In this king's

Book last illness, the physicians would not venture to
 XII. say he was in danger; and surely they acted very
 Chap. 11, right (^u).
 & 12.

(^u) See Burnet's History of the Reformation.

C H A P. XI.

Of Thoughts.

(^x) Plutarch, life of Dionysius.

MARSYAS dreamt that he had cut Dionysius's throat (^x). Dionysius put him to death, pretending that he would never have dreamt of such a thing by night, if he had not thought of it by day. This was a most tyrannical action; for tho' it had been the subject of his thoughts, yet he had made no attempt * towards it. The laws do not take upon them to punish any other than overt acts.

C H A P. XII.

Of indiscreet Speeches.

NOTHING renders the crime of high treason more arbitrary than declaring people guilty of it for indiscreet speeches. Speech is so subject to interpretation; there is so great a difference between indiscretion and malice, and frequently so little is there of the latter in the expressions used, that the law can hardly subject people to a capital punishment for words, unless it expressly declares what words they are which render a man guilty †.

* The thought must be joined with some sort of action.

† *Si non tale sit delictum in quod vel scriptura legis descendit vel ad exemplum legis vindicandum est*, says Modestinus in the seventh law, in ff. ad leg. Jul. Maj.

Words do not constitute an overt act; they remain only in idea. They generally, when considered by themselves, have no determinate signification; for this depends on the tone in which they are uttered. It often happens that in repeating the same words, they have not the same meaning; this meaning depends on their connection with other things; and sometimes more is expressed by silence than by any discourse whatsoever. As there can be nothing so equivocal and ambiguous as all this; how is it possible to convert it into a crime of high treason? Wherever this law is established; there is an end not only of liberty, but even of its very shadow.

In the manifesto of the late Czarina against the family of the D'Olgorucky's (^v), one of these princes is condemned to death for having uttered some indecent words concerning her person; another for having maliciously interpreted her sage regulations for the welfare of the empire, and for having offended her sacred person by disrespectful words. ^{(v) In 1740.}

Not that I pretend to diminish the indignation people ought to have against those who presume to stain the glory of their prince; what I mean is, that if despotic princes are willing to moderate their power, a simple correction would be more proper on those occasions, than an accusation of high treason, a thing always terrible even to innocence itself *.

Overt acts are not things that happen every day; they are liable to the observation of a great many people; and a false charge in respect to facts may

* *Nec lubricum linguæ ad pœnam facile trahendum est.* Modestin. in the 7th law in ff. ad leg. Jul. Maj.

BOOK
XII.
Chap. 13.

be easily detected. Words joined to an action assume the nature of this action. Thus a man who goes into a public market place to incite the subjects to revolt, incurs the guilt of high treason, because the words are joined to the action, and partake of its nature. It is not the words that are punished, but an action in which words are employed. They do not become criminal, but when they prepare for, accompany, or follow a criminal action: every thing is confounded, if words are construed as a capital crime instead of considering them only as a mark of a capital crime.

The emperors *Theodosius*, *Arcadius*, and *Honorius* wrote thus to *Rufinus* who was *præfectus prætorio*. “If a man speaks amiss of our person, or government, we do not for all that intend to punish him *; if he has spoke thro’ levity, we must despise him; if thro’ folly, we must pity him; and if he wrongs us, we must forgive him. Wherefore leaving things as they are, you must inform us accordingly, that we may be able to judge of words by persons, and that we may well consider whether we ought to punish or overlook them.”

C H A P. XIII.

Of Writings.

IN writings there is something more permanent than in words; but when they are no way preparative to high treason, they are not a subject of that crime.

* *Si id ex levitate processerit, contemnendum est; si ex insania, miseratione dignissimum; si ab injuria, remittendum, Leg. unica Cod. Si quis Imperat. maled.*

And

And yet *Augustus* and *Tiberius* subjected satyrical writers to the same punishment as for having violated the law of majesty. *Augustus* (²), because of some libels that had been wrote against men and women of the first quality ; *Tiberius*, because of those which he suspected to have been written against himself. Nothing was more fatal to Roman liberty. *Cremutius Cordus* was accused for having called *Cassius* in his annals the last of the Romans (^a).

Satyrical writings are hardly known in despotic governments, where dejection of mind on the one hand, and ignorance on the other, afford neither abilities nor will to write. In democracies they are not hindered for the very same reason, which causes them to be prohibited in monarchies : Being generally levelled against men of power and authority, they flatter the malignity of the people who are the governing party. In monarchies they are forbidden, but rather as a subject of civil animadversion, than as a capital crime. They may amuse the general malignity, please the malecontents, diminish the envy against public employments, give the people patience to suffer, and make them laugh at their sufferings.

But no government is so averse to satyrical writings as the aristocratical. There the magistrates are petty sovereigns, but not great enough to despise affronts. If in a monarchy a satyrical stroke is designed against the prince, he is placed in such an eminence that it does not reach him ; but an aristocratical lord is pierced to the very heart. Hence the decemvirs who formed an aristocracy, punished satyrical writings with death (^b).

BOOK
XII.
Chap. 13.
(²) *Tacitus's*
Annals,
Book 1.
This continued under the following Reigns.
See the first law in the Code *de famosiss libellis*.
(^a) *Tacit. Annal.*
Book 4.

(^b) The law of the twelve tables.

CHAP. XIV.

Breach of Modesty in punishing Crimes.

BOOK
XII.
Chap. 14,
& 15.

THERE are rules of modesty observed by almost every nation in the world; now it would be very absurd to infringe these rules in the punishment of crimes, the principal view of which ought always to be the establishment of order.

Was it the intent of those oriental nations who exposed women to elephants trained up for an abominable kind of punishment, was it, I say, their intent to establish one law by the breach of another?

By an ancient custom of the Romans it was not permitted to put girls to death till they were ripe for marriage. Tiberius found out an expedient of having them debauched by the executioner before they were brought to the place of punishment^(c): thus this bloody and subtle tyrant destroyed the morals of the people to preserve their customs.

(c) Suetonius in
Tiberio.

When the magistrates of Japan caused women to be exposed naked in the market-places, and obliged them to go upon all four like beasts, modesty was shocked^(d): but when they wanted to compel a mother——when they wanted to force a son——I cannot proceed; even nature herself was struck with horror.

(d) Collection of
voyages
that contributed to
the establishment
of the
East India
Company.
Tom. 5.
Part 2.

CHAP. XV.

Of the Infranchisement of Slaves in order to accuse their Master.

AUGUSTUS made a law that the slaves of those who conspired against his person, should

should be sold to the public that they might depose against their master ^(e). Nothing ought to be neglected that may contribute to the discovery of an heinous crime; it is natural therefore that in a government where there are slaves they should be allowed to inform; but they ought not to be admitted as witnesses.

BOOK
XII.
Chap. 16.
^(e) Dio in
Xiphili-
nus.

Vindex discovered the conspiracy that had been formed in favour of Tarquin; but he was not admitted a witness against the children of Brutus. It was right to give liberty to a person who had rendered so great a service to his country; but it was not given him in order to enable him to render this service.

Hence the emperor Tacitus ordained that slaves should not be admitted as witnesses against their masters, even in the case of high treason ^(f): a law which was not inserted in Justinian's compilation.

^(f) *Flavius Vopiscus* in his life.

CHAP. XVI.

Of Calumny in respect to the Crime of high Treason.

TO do justice to the Cæsars, they were not the first devisers of the dismal laws which they enacted. It is Sylla * that taught them that calumniators ought not to be punished; but the thing was soon carried so far as to reward them †.

* Sylla made a law of Majesty, which is mentioned in Cicero's orations, *pro Cluentio*, Art. 3. in *Pisonem*, Art. 21. 2d. against Verres, Art. 5. familiar epistles, Book 3. Letter 11. Cæsar and Augustus inserted them in the Julian laws; others made additions to them.

† *Et quò quis distinctior accusator eò magis honores assequatur, ac veluti sacrosanctus erat.* Tacit.

C H A P. XVII.

Of the revealing of Conspiracies.

BOOK
XII.
Chap. 17.

IF thy brother the son of thy mother, or thy son, or thy daughter, or the wife of thy bosom, or thy friend, which is as thine own soul, entice thee secretly, saying, Let us go and serve other gods, thou shalt surely kill him, thou shalt stone him *. This law of Deuteronomy cannot be a civil law among most of the nations known to us, because it would pave the way for all manner of wickedness.

No less severe is the law of several countries, which commands the subjects, on pain of death, to disclose conspiracies in which they are not even so much as concerned. When such a law is established in a monarchical government, it is very proper it should be under some restrictions.

It ought not to be applied in its full severity, but to the strongest cases of high treason. In those countries it is of the utmost importance not to confound the different degrees of this crime. In Japan, where the laws subvert every idea of human reason, the crime of concealment is applied even to the most ordinary cases.

(*) Collection of voyages that contributed to the establishment of the East-India Company. p. 423. book 5. part 2d.

A certain relation (*) makes mention of two young ladies, who were shut up for life in a box thick set with pointed nails, one for having had a love intrigue, and the other for not disclosing it.

* Deuteron. chap. xiii. v. 6.

C H A P. XVIII.

*How dangerous it is in Republics to be too severe
in punishing the Crime of high Treason.*

AS soon as a republic has compassed the destruction of those who wanted to subvert it, there should be an end of examples, punishments, and even of rewards. B O O K
XII.
Chap. 18.

Great punishments, and consequently great changes, cannot take place without investing some citizens with too great a power. It is therefore more adviseable in this case to exceed in lenity, than in severity; to banish but few, rather than many; and to leave them their estates, rather than to make a great number of confiscations. Under pretence of avenging the republic's cause, the avengers would establish tyranny. The business is not to destroy the rebel but the rebellion. They ought to return as quick as possible into the usual track of government, in which every one is protected by the laws, and no one injured.

We find in Appian^(h), the edict and formula^(h) of the proscriptions. One would imagine that they had no other aim than the good of the republic, so coolly they speak, so many advantages they point out, so preferable are the means they take to others, such security they promise to the rich, such tranquillity to the poor, so afraid they seem to be of endangering the lives of the subjects, so desirous of appeasing the soldiers: a dreadful example, which shews how near severe punishments border upon tyranny. (h) Of the
civil wars,
Book 4.

BOOK
XII.
Chap. 19.
(ⁱ) Dionys. Halicarn. Roman Antiquities, Book 8.

The Greeks set no bounds to the vengeance they took of tyrants or of those they suspected of tyranny; they put their children to death (ⁱ), nay sometimes five of their nearest relations*; and they proscribed an infinite number of families. By this means their republics suffered the most violent shocks; exiles or the return of the exiled were always epochas that indicated a change of the constitution.

The Romans had more sense. When Cassius was put to death for having aimed at tyranny, the question was proposed whether his children should undergo the same fate: but they were preserved.

(^k) Book 8. P. 547. “*They, says Dionysius Halicarnasseus (^k), who wanted to change this law at the end of the Marian and civil wars, and to exclude from public offices the children of those who had been proscribed by Sylla, are very much to blame.*”

CHAP. XIX.

In what manner the Use of Liberty is suspended in a Republic.

IN countries where liberty is most esteemed, there are laws by which a single person is deprived of it, in order to preserve it for the whole community. Such are in England what they call *Bills of Attainder* †. These are relative to those Athenian

* *Tyranno occiso quinque ejus proximos cognatione magistratus necato*, Cic. de Invent. lib. 2.

† The author of the Continuation of Rapin Thoyras defines *A Bill of Attainder*, a sentence which upon being approved by the two houses and signed by the king passes into an act, whereby the party accused is declared guilty of high treason without any other formality, and without appeal, Tom. 2. p. 266.

laws by which a private person was condemned ||, provided they were made by the unanimous suffrage of six thousand citizens. They are relative also to those laws which were made at Rome against private citizens, and were called *privileges* *. These were never passed but in the great meetings of the people. But in what manner soever they are enacted, Cicero is for having them abolished, because the force of law consists in its being made for the whole community §. I must own, notwithstanding, that the practice of the freest nation that ever existed, induces me to think that there are cases in which a veil should be drawn for a while over liberty, as it was customary to veil the statues of the Gods.

C H A P. XX.

Of Laws favourable to the Liberty of the Subject in a Republic.

I N popular governments it often happens that accusations are carried on in public, and every man is allowed to accuse whomsoever he pleases. This rendered it necessary to establish proper laws in order to protect the innocence of the subject. At Athens if an accuser had not the fifth part of the votes on his side, he was obliged to pay a fine of a thousand drachms. Æschines who accused Ctesiphon, was condemned to pay this fine (†). At Rome a false accuser was branded with infamy †, by marking the letter K on his forehead. Guards

(†) See *Philostatus* book 1. Lives of the Sophists, life of Æschines. See likewise *Plutarch* and *Pho-*
were cius.

|| *Legem de singulari aliquo ne rogato nisi sex millibus ita visum.* Ex *Andocide de Mysteriis*. This is what they called Ostracism.

* De privis hominibus lata, *Cicero de Leg. lib. 3.*

§ Scitum est iussum in omnes, *Cicero ibid.*

† By the Remmian Law.

BOOK
XII.
Chap. 21.
(^f) Plu-
tarch in
a treatise
entitled,
*How a
person
may reap
advantage
from his
enemies.*

were also appointed to watch the accuser, in order to prevent his corrupting either the judges or the witnesses (^f).

I have already taken notice of that Athenian and Roman law, by which the party accused was allowed to withdraw before judgment was pronounced.

CHAP. XXI.

Of the Cruelty of Laws in respect to debtors in a Republic.

GREAT is the superiority which one fellow-subject has already over another, by lending him money, which the latter borrows in order to spend, and of course has no longer in his possession. What must be the consequence if the laws of a republic make a farther addition to this servitude and subjection?

(^v) Plu-
tarch life
of Solon.

At Athens and Rome * it was at first permitted to sell such debtors as were insolvent. Solon redressed this abuse at Athens (^t); by ordaining that no man's body should answer for his civil debts. But the decemvirs † did not reform the same custom at Rome; and tho' they had Solon's regulation before their eyes, yet they did not chuse to follow it. This is not the only passage of the law of the twelve tables, in which the decemvirs shew their design of checking the spirit of democracy.

Often did those cruel laws against debtors throw the Roman republic into danger. A man all covered

* A great many sold their children to pay their debts. *Plu-
tarch* life of Solon.

† It appears from history that this custom was established among the Romans before the law of the twelve tables. *Livy* l. dec. book 2.

with

with wounds, made his escape from his creditor's house, and appeared in the forum^(v). The people were moved with this spectacle, and other citizens whom their creditors durst no longer confine, emerged from their dungeons. They had promises made them, which were all broke. The people upon this having withdrawn to the Sacred Mount, obtained, not an abrogation of those laws, but a magistrate to defend them. Thus they quitted a state of anarchy, but were soon in danger of falling into tyranny. Manlius to render himself popular, was going to set those citizens at liberty, who had been reduced to slavery by their inhuman creditors^(w). Manlius's designs were prevented, but without remedying the evil. Particular laws facilitated to debtors the means of paying^(x), and in the year of Rome 428 the consuls proposed a law * which deprived creditors of the power of confining their debtors in their own houses†. An usurer, by name *Papirius*, attempted to corrupt the chastity of a young man named *Publius*, whom he kept in irons. *Sex-tus*'s crime gave to Rome its political liberty; that of *Papirius* gave it also the civil.

Such was the fate of this city, that new crimes confirmed the liberty, which those of a more ancient date had procured it. *Appius*'s attempt upon *Virginia*, flung the people again into that horror against tyrants with which the misfortune of *Lucretia* had first inspired them. Thirty seven years after^(y) the crime of the infamous *Papirius*, an action of the

Book
XII.
Chap. 22.
(v) *Dionys.*
Halicarn.
Rom. An-
tiq. book
VI.

(w) *Plu-*
tarch life
of *Furius*
Camillus.
(x) See
what fol-
lows in
the 24th
chapter of
the book
of laws as
relative to
the use of
money.

(y) The
year of
Rome 465.

* One hundred and twenty years after the law of the twelve tables, *eo anno plebi Romanæ, velut aliud initium libertatis factum est quod neci deferunt.* Livy lib. 8.

† *Bona debitoris, non corpus obnoxium esset.* Ibid.

BOOK XII. like criminal nature || was the cause of the people's retiring to the *Janiculum* ⁽²⁾, and of giving new vigor to the law made for the safety of debtors.

(2) See a fragment of *Dionys. Halicarn.* Since that time creditors were oftener prosecuted by debtors for having violated the laws against usury, than the latter were sued for refusing to pay them.

in the extract of virtues and vices, Livy's epitome, book 2. & Freinshemius book 2.

C H A P. XXII.

Of things that strike at Liberty in Monarchies.

LIBERTY has been often weakened in monarchies by a thing of the least use in the world to the prince: this is the naming of commissioners to try a private person.

The prince himself derives so very little advantage from those commissioners, that it is not worth while to change for their sake the common course of things. He is morally sure that he has more of the spirit of probity and justice than his commissioners, who always think themselves sufficiently justified by his orders, by a dubious interest of state, by the choice that has been made of them, and even by their very apprehensions.

Upon the arraignment of a peer under Henry VIII. it was customary to try him by a committee of the house of lords: by this means he put to death as many peers as he pleased.

|| That of *Plautius* who made an attempt upon the body of *Veturius*; *Valerius Maximus* book 6. art. 9. These two events ought not to be confounded; they are neither the same persons, nor the same times.

C H A P. XXIII.
Of Spies in Monarchies.

SHOULD I be asked whether there is any necessity for spies in monarchies; my answer would be that the usual practice of good princes is not to employ them. When a man obeys the laws, he has discharged his duty to his prince. He ought at least to have his own house for an asylum, and the rest of his conduct should be exempt from inquiry. The spying-trade might perhaps be tolerable, were it practised by honest men; but the necessary infamy of the person is sufficient to make us judge of the infamy of the thing. A prince ought to act towards his subjects with candor, frankness, and confidence. He that has so much disquiet, suspicion and fear, is an actor embarrassed in playing his part. When he finds that the laws are generally observed and respected, he may judge himself safe. The general behaviour of the public answers for that of every individual. Let him not be afraid: he cannot imagine how natural it is for his people to love him. And how should they do otherwise than love him? since he is the source of almost all the favours that are shewn; punishments being generally charged to the account of the laws. He never shews himself to his people but with a serene countenance; they have even a share of his glory, and they are protected by his power. A proof of his being beloved is that his subjects have a confidence in him; what the minister refuses, they imagine the prince would have granted: even under public calamities they do not accuse his person;

Book
 XII.
 Chap. 23.

BOOK
XII.
Chap. 24.

son; they are apt to complain of his being misinformed, or beset by corrupt men: *Did the prince but know*, say the people; these words are a kind of invocation and a proof of the confidence they have in his person.

CHAP. XXIV.

Of Anonymous Letters.

(^c) Plutarch's
Morals,
*Comparison of some
Roman and Greek
Histories*, tom.
2. p. 487.

THE Tartars are obliged to put their names to their arrows, that the arm may be known that shoots them. When Philip of Macedon was wounded at the siege of a certain town, these words were found on the javelin, *After has given this mortal wound to Philip.* (^c). If they who accuse a person did it merely to serve the public, they would not carry their complaint to the prince, who may be easily prejudiced, but to the magistrates who have rules that are formidable only to calumniators. But if they are unwilling to leave the laws open between them and the accused, it is a presumption they have reason to be afraid of them; and the least punishment they ought to suffer, is not to be credited. No notice therefore should ever be taken of those letters but in cases that cannot admit of the delays of the ordinary course of justice, and where the prince's welfare is concerned. Then it may be imagined that the accuser has made an effort which has untied his tongue and made him speak. But in other cases one ought to say with the emperor Constantius: "*We cannot suspect a person who has wanted an accuser, whilst he did not want an enemy*" (^d)."

(^d) Leg.
VI. Cod.
Theod.
*de Famos
Libellis.*

CHAP.

C H A P. XXV.

Of the manner of governing in Monarchies.

THE royal authority is a great spring that ought to move easily and without noise. ^{Book XII.}
 The Chinese boast of one of their emperors, who ^{Chap. 25.}
 governed, they say, like the heavens, that is, by ^{& 26.}
 his example.

There are some cases in which a sovereign ought to exert the full extent of his power; and others in which he ought to reduce it within its proper limits. The sublimity of administration consists in knowing perfectly the proper degree of power, that should be exerted on different occasions.

The whole felicity of our monarchies consists in the opinion people have of the lenity of the government. A wrong-headed minister always wants to remind us of our slavery. But granting even that we are slaves, he ought to endeavour to conceal our miserable condition from us. All he can say or write, is that the prince is uneasy, that he is surpris'd, and that he will set things to rights. There is a certain ease in commanding; the prince ought only to encourage, and leave the menacing part to the laws*.

C H A P. XXVI.

That in a Monarchy the Prince ought to be of easy Access.

THE utility of this maxim will appear better from the inconveniency attending the

* Nerva, says Tacitus, encreased the ease of the empire.

BOOK
XII.
Chap. 27.
(*) State of
Russia, p.
173. Paris
edition,
1717.

contrary practice. "The Czar Peter I. SAYS THE
SIEUR PERRY (*), has published a new edict, by
which he forbids any of his subjects to offer him
a petition till after having presented it to two of
his officers. In case of refusal of justice they may
present him a third, but upon pain of death if they
are in the wrong. After this no one ever presumed
to offer a petition to the Czar."

CHAP. XXVII.

Of the Manners of a Monarch.

THE manners of a prince contribute as much as the laws themselves to liberty; like these he may transform men into beasts, and beasts into men. If he likes free and noble souls, he will have subjects; if he likes base dastardly spirits, he will have slaves. Does he want to know the great art of ruling? Let him call honor and virtue around his person, let him invite personal merit. He may even sometimes cast an eye on talents and abilities. Let him not be afraid of those rivals who are called men of merit; he is their equal as soon as he loves them. Let him gain the hearts of his people without bringing their spirits into subjection. Let him render himself popular; he ought to be pleased with the affection of the lowest of his subjects, for they too are men. The common people require so very little deference, that it is fit they should be humoured; the infinite distance between the sovereign and them will surely prevent them from giving him any uneasiness. Let him be exorable to supplication, and resolute against demands; let him be sensible

sensible in fine, that his people have his refusals, while his courtiers enjoy his favors.

Book
XII.
Chap. 28.

C H A P. XXVIII.

Of the Regard which Monarchs owe to their Subjects.

PRINCES ought to be extremely circumspect in point of raillery. It pleases with moderation, because it opens the way to familiarity; but a biting raillery is less excusable in them than in the meanest of their subjects, for it is they alone that give a mortal wound.

Much less ought they to offer a notorious insult to any of their subjects; kings were instituted to pardon, and to punish, but never to insult.

When they insult their subjects, their treatment is more cruel than that of the Turk or the Muscovite. The insults of the latter are a humiliation, not a disgrace; but both must follow from the insults of the former.

Such is the prejudice of the eastern nations, that they look upon an affront coming from the prince, as the effect of paternal goodness; and such on the contrary is our way of thinking, that to the cruel vexation of being affronted, we join the despair of ever being able to wipe off the disgrace.

Princes ought to be overjoyed to have subjects to whom honor is dearer than life, an incitement to fidelity as well as to courage.

They should remember the misfortunes that have happened to princes for insulting their subjects, the revenge of *Chærea*, of the eunuch *Narses*, of count *Julian*, and in fine of the dutchess of *Montpensier*, who being enraged against Henry III. for having

BOOK published some of her private failings, plagued him
XII. all his life.
Chap. 29.

C H A P. XXIX.

*Of the civil Laws proper for mixing a little
Liberty in a despotic Government.*

TH O' despotic governments are of their own nature every where the same; yet from circumstances, from an opinion of religion, from prejudice, from received examples, from a particular turn of mind, from manners or morals, it is possible they may admit of a considerable difference.

It is useful that some particular notions should be established in those governments, thus in China the prince is considered as the father of his people; and at the commencement of the empire of the Arabs, the prince was their preacher*.

It is proper there should be some sacred book to serve for a rule, as the Koran among the Arabs, the books of Zoroaster among the Persians, the Vedam among the Indians, and the classic Books among the Chinese. The religious code supplies the civil one, and directs the arbitrary power.

It is not at all amiss that in dubious cases the judges should consult the ministers of religion^(f). Thus in Turkey the Cadis consult the Mollachs. But if it is a capital crime, it may be proper for the particular judge, if such there be, to take the governor's advice, to the end that the civil and ecclesiastic power may be tempered also by the political authority.

(f) History of the Tatars, 3d part p. 277. in the remarks.

* The Caliphs.

CHAP. XXX.

The same Subject continued.

NOTHING but the very excess and fury of despotic power ordained that the father's disgrace should drag after it that of his wife and children. They are wretched enough already without being criminals: besides, the prince ought to leave suppliants or mediators between himself and the accused, to assuage his wrath, or to inform his justice.

BOOK
XII.
Chap. 30.

It is an excellent custom of the Maldivians (^g), that when a lord is disgraced, he goes every day to pay his court to the king till he is taken again into favor: his presence disarms the prince's wrath.

(^g) See
Francis
Pirard.

In some despotic governments * they have a notion that it is trespassing against the respect due to their prince, to speak to him in favour of a person in disgrace. These princes seem to use all their endeavours to deprive themselves of the virtue of clemency.

Arcadius and *Honorius*, in a law (^h) which we have already descanted upon (ⁱ), positively declare that they will shew no favor to those who shall presume to petition them in behalf of the guilty (^k). This was a very bad law indeed, since it is bad even under a despotic government.

(^h) The
fifth law
in the cod.
ad leg.

Jul. Maj.

(ⁱ) In the
8th chap-
ter of this
book.

(^k) Frede-
ric copied
this law in

The custom of Persia, which permits every man that pleases, to leave the kingdom, is excellent;

* As at present in Persia, according to Sir John Chardin; the constitution of this custom is very ancient. They put Cavades, says Procopius, in the castle of oblivion; there is a law which forbids any one to speak of those who are shut up, or even to mention their name.

and tho' the contrary practice derives its origin from despotic power, which has always looked upon subjects as slaves*, and those who quit the country as fugitives, yet the Persian practice is useful even to a despotic government, because the apprehension of the flight, or of the withdrawing of debtors, puts a stop to, or moderates the oppressions of bashaws and extortioners.

* In monarchies there is generally a law which forbids those who are invested with public employments to go out of the kingdom without the prince's leave. This law ought to be established also in republics. But in those that have particular institutions the prohibition ought to be general, in order to prevent the introduction of foreign manners.





B O O K XIII.

Of the Relation which the levying of Taxes and the Greatness of the public Revenues have to Liberty.

C H A P. I.

Of the State Revenues.

THE revenues of the state are a portion that each subject gives of his property, in order to secure, or to have the agreeable enjoyment of, the remainder.

BOOK
XIII.
Chap. I.

To fix these revenues in a proper manner, regard should be had both to the necessities of the state and to those of the subject. The real wants of the people ought never to give way to the imaginary wants of the state.

Imaginary wants are those which flow from the passions, and from the weakness of the governors, from the charms of an extraordinary project, from the distempered desire of vain glory, and from a certain impotency of mind incapable of withstanding the attacks of fancy. Often has it happened that ministers of a restless disposition, have imagined that the wants of the state were those of their own little and ignoble souls.

There is nothing requires more wisdom and prudence than the regulation of that portion which is taken from, and of that which is left to, the subject.

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The public revenues are not to be measured by what the people are able, but by what they ought, to give ; and if they are measured by what they are able to give, it ought to be at least by what they are able to give for a constancy.

CHAP. II.

That it is bad Reasoning to say that the Greatness of Taxes is good in its own Nature.

THERE have been instances in particular monarchies, of small states exempt from taxes, that have been as miserable as the circumjacent places which groaned under the weight of exactions. The chief reason of this is ; that the small state can hardly have any such thing as industry, arts, or manufactures, because in this respect it lies under a thousand restraints from the great state in which it is inclosed. The great state that surrounds it, is blessed with industry, manufactures, and arts ; and establishes laws by which those several advantages are procured. The petty state becomes therefore necessarily poor, let it pay ever so few taxes.

And yet some have concluded from the poverty of those petty states, that in order to render the people industrious, they should be loaded with taxes. But it would be a much better conclusion to say that they ought to have no taxes at all. None live here but wretches who retire from the neighbouring parts to avoid working ; wretches who disheartened by pain and toil make their whole felicity consist in idleness.

The

The effect of wealth in a country is to inspire every heart with ambition: the effect of poverty is to give birth to despair. The former is excited by labour, the latter is soothed by indolence.

Nature is just to all mankind; she rewards them for their industry; whilst she renders them industrious by annexing rewards in proportion to the greatness of their labour. But if an arbitrary power deprives people of the recompenses of nature, they fall into a disrelish of industry, and then indolence and inaction seem to be their only happiness.

C H A P. III.

Of Taxes in Countries where Part of the People are Villains or Bondmen.

THE state of villainage is sometimes established after a conquest. In that case the bondman or villain that tills the land, ought to have a kind of partnership with his master. Nothing but a communication of loss or profit can reconcile those, who are doomed to labour, with those who are blessed with a state of affluence.

C H A P. IV.

Of a Republic in the like Case.

WHEN a republic has reduced a nation to the drudgery of cultivating her lands, she ought never to suffer the free subject to have a power of increasing the tribute of the bondman. This was not permitted at Sparta. Those brave people thought the Helotes ⁽¹⁾ would be more industrious in cultivating their lands, upon knowing that their ⁽¹⁾ Plutarch. servitude

servitude was not to increase; they imagined likewise that the masters would be better citizens when they desired no more than what they were accustomed to enjoy.

C H A P. V.

Of a Monarchy in the like Case.

WHEN the nobles of a monarchical state cause the lands to be cultivated for their own use by a conquered people, they ought never to have a power of increasing the service or tribute*. Besides it is right the prince should be satisfied with his own demesne and the military service. But if he wants to raise taxes on the bondmen of his nobility, the lords of the several districts ought to be answerable for the tax †, and be obliged to pay it for the bondmen, by whom they may be afterwards reimbursed. But if this rule is not followed, the lord and the collectors of the prince's taxes will harass the poor bondman by turns, till he perishes with misery or flies into the woods.

C H A P. VI.

Of a despotic Government in the like Case.

WHAT has been above said, is still more indispensably necessary in a despotic government. The lord who is every moment liable to be stripped of his lands and bondmen, is not so eager to preserve them.

* This is what induced Charlemagne to make his excellent institutions upon this head. See the 5th book of the *Capitularies*, art. 303.

† This is the practice in Germany.

When

When Peter I. thought proper to follow the custom of Germany, and to demand his taxes in money, he made a very prudent regulation which is still followed in Russia. The gentleman levies the tax on the peasants, and pays it to the Czar. If the number of peasants diminishes, he pays all the same; if it increases, he pays no more: so that it is his interest not to worry or oppress his vassals.

C H A P. VII.

Of Taxes in Countries where Villainage is not established.

WHEN the inhabitants of a state are all free subjects, and each man enjoys his property with as much right as the prince his sovereignty, taxes may then be laid either on persons, on lands, on merchandises, on two of these, or on all three together.

In the taxing of persons, it would be an unjust proportion to conform exactly to that of property. At Athens the ^(m) people were divided into four ^(m) Pollux. book 8th, chap. 10. art. 130. classes. Those who drew five hundred measures of liquid or dry fruit from their estates, paid a * talent to the public; those who drew three hundred measures, paid half a talent; those who had two hundred measures paid ten minæ; those of the fourth class paid nothing at all. The tax was fair, tho' it was not proportionable: if it did not follow the proportion of people's property, it followed that of their wants. It was judged that every man had an equal share of what was *necessary for nature*; that whatsoever was *necessary for nature*,

* Or 60 minæ.

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ought not to be taxed; that to this succeeded the useful, which ought to be taxed, but less than the superfluous; and that the largeness of the taxes on what was superfluous prevented superfluity.

In the taxing of lands, it is customary to make lists or registers in which the different classes of estates are ranged. But it is very difficult to know these differences, and still more so to find people that are not interested in mistaking them. Here therefore are two sorts of injustice, that of the man and that of the thing. But if in general the tax be not exorbitant, and the people continue to have plenty of necessaries, these particular acts of injustice will do no harm. On the contrary, if the people are permitted to enjoy only just what is necessary for subsistence, the least disproportion will be of the greatest consequence.

If some subjects do not pay enough, the mischief is not so great; their convenience and ease turn always to the public advantage: if some private people pay too much, their ruin redounds to the public detriment. If the government proportions its fortune to that of individuals, the ease and conveniency of the latter will soon make its fortune rise. The whole depends upon a critical moment: shall the state begin with impoverishing the subjects to enrich itself? Or had it better wait to be enriched by its wealthy subjects? Is it more adviseable for it to have the first, or the second advantage? Which shall it chuse, to begin, or to end, with being rich?

The duties felt least by the people are those on merchandize, because they are not demanded of them in form. They may be so prudently managed, that the

the people themselves shall hardly know they pay them. For this purpose it is of the utmost consequence that the person who sells the merchandize should pay the duty. He is very sensible that he does not pay it for himself; and the consumer who pays it in the main, confounds it with the price. Some authors have observed that Nero had abolished the duty of the five and twentieth part arising from the sale of slaves *; and yet he had only ordained that it should be paid by the seller instead of the purchaser: this regulation, which left the impost intire, seemed nevertheless to suppress it.

There are two states in Europe where there are very heavy imposts upon liquors; in one the brewer alone pays the duty, in the other it is levied indiscriminately upon all the consumers: in the first no body feels the rigor of the impost, in the second it is looked upon as a grievance. In the former the subject is sensible only of the liberty he has of not paying, in the latter he feels only the necessity that compels him to pay.

Farther, the obliging the consumers to pay, requires a perpetual rummaging and searching into their houses. Now nothing is more contrary than this to liberty; and those who establish these sorts of duties, have not surely been so happy in this respect, as to hit upon the best method of administration.

* *Vestigal quintæ & vicesimæ venalium mancipiorum remissum specie magis quam vi, quia cum venditor pendere juberetur, in partem pretii emptoribus accrescebat.* Tacit. Annal. lib. 13.

C H A P. VIII.

In what Manner the Illusion is preserved.

BOOK
XIII.
Chap. 8.

IN order to make the purchaser confound the price of the commodity with the impost, there must be some proportion between the impost and the value of the commodity ; wherefore there ought not to be an excessive duty upon merchandizes of little value. There are countries in which the duty exceeds seventeen or eighteen times the value of the commodity. In this case the prince removes the illusion : his subjects plainly see they are dealt with in an unreasonable manner ; which renders them most exquisitely sensible of their slavish situation.

Besides the prince to be able to levy a duty so disproportioned to the value of the commodity, must be himself the vender, and the people must not have it in their power to purchase it elsewhere : a practice subject to a thousand inconveniences.

Smuggling being in this case extremely lucrative, the natural and most reasonable penalty, namely the confiscation of the merchandize, becomes incapable of putting a stop to it, especially as this very merchandize is intrinsically of an inconsiderable value. Recourse must therefore be had to extravagant punishments, such as those inflicted for capital crimes. All proportion then of punishment is at an end. People that cannot really be considered as bad men, are punished like villains ; which of all things in the world, is the most contrary to the spirit of a moderate government.

Again, the more the people are tempted to cheat the farmer of the revenues, the more the latter is enriched,

enriched, and the former impoverished. To put a stop to smuggling, the farmer must be invested with extraordinary means of oppressing, and then the country is ruined.

BOOK
XIII.
Chap. 9.
& 10.

C H A P. IX.

Of a bad kind of Impost.

WE shall here take some cursory notice of an impost laid in particular countries on the different articles of civil contracts. As these are things subject to very nice disquisitions, a vast deal of knowledge is necessary to make any tolerable defence against the farmer of the revenues, who interprets in that case, the regulations of the prince, and exercises an arbitrary power over people's fortunes. Experience has demonstrated that a duty on the paper on which the deeds are drawn, would be of far greater service.

C H A P. X.

That the Greatness of Taxes depends on the Nature of the Government.

TAXES ought to be very light in despotic governments; otherwise who would be at the trouble of tilling the land? Besides, how is it possible to pay heavy taxes in a government that makes no manner of return to the different contributions of the subject?

The exorbitant power of the prince, and the extreme depression of the people, require that there should not be even a possibility of the least mistake between them. The taxes ought to be so easy

to

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to collect, and so clearly settled, as to leave no opportunity for the collectors to increase or diminish them. A portion of the fruits of the earth, a capitation, a duty of so much per cent. on merchandizes, are the only taxes suitable to that government.

Merchants in despotic countries ought to have a personal safeguard, to which all due respect should be paid. Without this they would stand no chance in the disputes that might arise between them and the prince's officers.

CHAP. XI.

Of fiscal Punishments.

WITH respect to fiscal punishments, there is one thing very particular, that contrary to the general custom, they are more severe in Europe than in Asia. In Europe not only the merchandizes, but even sometimes the ships and carriages are confiscated; which is never practised in Asia. This is because in Europe the merchant has judges, who are able to shelter him from oppression; in Asia the despotic judges themselves would be the greatest oppressors. What remedy could a merchant have against a bashaw that was determined to confiscate his merchandises?

The prince therefore restrains his own power, finding himself under a necessity of acting with some kind of lenity. In Turkey they raise only a single duty for the importation of goods, and afterwards the whole country is open to the merchant. Smuggling is not attended with confiscation, or increase of duty. In China (°) they never

(°) Father
du Halde
Tom. 2.
P 37.

ver open the baggage of those who are not merchants. Defrauding the customs in the territory of the Mogul is not punished with confiscation, but with doubling the duty. The princes of ^(b) Tartary who reside in towns, impose scarce any duty at all on the goods that pass through their country. In Japan, it is true, the defrauding of the customs is a capital crime; but this is because they have particular reasons for prohibiting all communication with foreigners; hence the fraud * is rather a contravention of the laws made for the security of the government, than of those of commerce.

^(b)History
of the
Tartars,
part 3d.
p. 290.

C H A P. XII.

Relation between the Greatness of Taxes and Liberty.

IT is a *general rule*, that taxes may be heavier in proportion to the liberty of the subject, and that there is a necessity for reducing them in proportion to the increase of slavery. This has always been and always will be the case. It is a rule derived from nature that never varies. We find it in all parts, in England, in Holland, and in every state where liberty gradually declines till we come to Turkey. Swisserland seems to be an exception to this rule, because they pay no taxes; but the particular reason for that exemption is well

* Being willing to trade with foreigners without having any communication with them, they have pitched upon two nations for that purpose, the Dutch for the commerce of Europe, and the Chinese for that of Asia; they confine the factors and sailors in a kind of prison, and lay such a restraint upon them as tires their patience.

BOOK
XIII.
Chap. 12.

known, and even confirms what I have advanced. In those barren mountains provisions are so dear, and the country is so populous, that a Swiss pays four times more to nature, than a Turk does to the Sultan.

A conquering people, such as were formerly the Athenians and the Romans, may rid themselves of all taxes, as they reign over vanquished nations. Then indeed they do not pay in proportion to their liberty, because in this respect they are no longer a people, but a monarch.

But the general rule still holds good. In moderate governments there is an indemnity for the weight of the taxes, which is liberty. In despotic countries * there is an equivalent for liberty, which is the lightness of the taxes.

In some monarchies in Europe, there are † particular provinces, which from the very nature of their civil government are in a more flourishing condition than the rest. It is pretended that these provinces are not sufficiently taxed, because thro' the goodness of their government they are able to be taxed higher: hence the ministers seem constantly to aim at depriving them of this very government, from whence a diffusive blessing is derived; a blessing which spreads its influence to distant parts, and redounds even to the prince's advantage.

* In Russia the taxes are but small; they have been increased since the despotic power of the prince is exercised with more moderation. See the History of the Tartars, 2d part.

† The *Pais d'etats*, where the states of the province assemble to deliberate on public affairs.

C H A P. XIII.

In what Governments Taxes are capable of Increase.

TA X E S may be increased in most republics, because the citizen, who thinks he is paying himself, willingly submits to them, and moreover is generally able to bear their weight thro' an effect of the nature of the government.

Book
XIII.
Chap. 13,
& 14.

In a monarchy taxes may be increased, because the moderation of the government is capable of procuring riches: it is a recompence, as it were, of the prince for the respect he shews to the laws. In despotic governments they cannot be increased, because there can be no increase of the extremity of slavery.

C H A P. XIV.

That the Nature of the Taxes is relative to the Government.

A C A P I T A T I O N is more natural to slavery; a duty on merchandizes is more natural to liberty, because it has not so direct a relation to the person.

It is natural in a despotic government for the prince not to give money to his soldiers, or to those belonging to his court; but to distribute lands amongst them, and of course that there should be very few taxes. But if the prince gives money, the most natural tax he can raise, is a capitation, which can never be considerable. For as it is impossible to make different classes of the contributors, because of the abuses that might arise from

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thence, considering the injustice and violence of the government, they are under an absolute necessity of regulating themselves by the rate of what even the poorest and most wretched are able to pay.

The natural tax of moderate governments, is the duty laid on merchandizes. As this is really paid by the consumer, tho' advanced by the merchant, it is a loan which the merchant has already made to the consumer. Hence the merchant must be considered on the one side, as the general debtor of the state, and on the other as the creditor of every individual. He advances to the state, the duty which the consumer will some time or other refund, and he has paid for the consumer the duty which he has paid for the merchandize. It is therefore obvious that in proportion to the moderation of the government, to the prevalence of the spirit of liberty, and to the security of private fortunes, the more a merchant has it in his power to advance money to the state, and to pay considerable duties for individuals. In England a merchant lends really to the government fifty or sixty pounds sterling for every tun of wine he imports. Where is the merchant that would dare do any such thing in a country like Turkey? And were he so presumptuous, how could he do it with a dubious or shattered fortune?

CHAP. XV.

Abuse of Liberty.

TO these great advantages of liberty it is owing that liberty itself has been abused.
Because

Because a moderate government has been productive of admirable effects, this moderation has been laid aside: because great taxes have been raised, they wanted to raise them to excess: and ungrateful to the hand of liberty of whom they received this present, they addressed themselves to slavery who never grants the least favor.

Liberty produces excessive taxes; the effect of excessive taxes is slavery; and slavery produces a diminution of tribute.

Most of the edicts of the eastern monarchs are to exempt every year some province of their empire from paying tribute *. The manifestations of their will are favors. But in Europe the edicts of princes are disagreeable even before they are seen, because they always make mention of their own wants, but not a word of ours.

From an unpardonable indolence in the ministers of those countries, owing to the nature of the government, and frequently to the climate, the people derive this advantage, that they are not incessantly plagued with new demands. The public expence does not increase, because the ministers do not form new projects; and if some by chance are formed, they are such as are soon executed. The governors of the state do not perpetually torment the people, because they do not perpetually torment themselves. But it is impossible there should be any fixed rule in our finances, because we always know that we shall have something or other to do, without ever knowing what it is.

It is no longer customary with us to give the

* This is the practice of the Emperors of China.

appellation of a great minister to a wise dispenser of the public revenues ; but to a person of dexterity and cunning, who is clever at finding out what we call the ways and means.

C H A P. XVI.

Of the Conquests of the Mahometans.

IT was this excess of taxes * that occasioned the prodigious facility with which the Mahometans carried on their conquests. Instead of a continual series of extortions devised by the subtle avarice of the emperors, the people were subjected to a simple tribute, which was paid and collected with ease. Thus they were far happier in obeying a barbarous nation, than a corrupt government, in which they suffered every inconveniency of a lost liberty, with all the horrors of a present slavery.

C H A P. XVII.

Of the Augmentation of Troops.

ANEW distemper has spread itself over Europe ; it has infected our princes, and induces them to keep up an exorbitant number of troops. It has its redoublings, and of necessity becomes contagious. For as soon as one prince augments what he calls his troops, the rest of course do the same ; so that nothing is gained thereby but the public ruin. Each monarch keeps as many armies on foot as if his people were in dan-

* See in history the greatness, the oddity, and even the folly of those taxes. Anastasius invented a tax for breathing, *ut quisque pro haustu aeris penderet.*

ger of being exterminated; and they gave the name of peace * to this general effort of all against all. Thus Europe is ruined to that degree, that were private people to be in the same situation as the three most opulent powers of this part of the world, they would not have necessary subsistence. We are poor with the riches and commerce of the whole universe; and soon, by thus augmenting our troops, we shall have nothing but soldiers, and be reduced to the very same situation as the Tartars †.

Great princes not satisfied with hiring or buying troops of petty states, make it their business on all sides to pay subsidies for alliances, that is, almost generally, to throw away their money.

The consequence of such a situation is the perpetual augmentation of taxes; and the mischief which prevents all future remedy, is that they reckon no more upon their revenues, but go to war with their whole capital. It is no unusual thing to see governments mortgage their funds even in time of peace, and to employ what they call extraordinary means to ruin themselves; means so extraordinary indeed, that such are hardly thought on by the most extravagant young spendthrift.

C H A P. XVIII.

Of an Exemption from Taxes.

TH E maxim of the great eastern empires of exempting such provinces, as have very
X 4 much

* True it is that this state of effort is the chief support of the balance, because it checks the great powers.

† All that is wanting for this, is to improve the new invention

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much suffered, from taxes, ought to be extended to monarchical states. There are some indeed where this maxim is established; yet the country is more oppressed than if no such rule took place; because as the prince levies still neither more nor less, the state becomes bound for the whole. In order to ease a village that pays badly, they load another that pays better; the former is not relieved, and the latter is ruined. The people grow desperate between the necessity of paying, for fear of exactions; and the danger of paying, for fear of new charges.

A well regulated government ought to set aside for the first article of its expence a determinate sum for contingent cases. It is with the public as with individuals, who are ruined when they live up exactly to their income.

With regard to an obligation for the whole amongst the inhabitants of the same village, some pretend *, that it is but reasonable, because there is a possibility of a fraudulent combination on their side: but who ever heard that upon mere suppositions we are to establish a thing in itself unjust and ruinous to the state?

C H A P. XIX.

Which is most suitable to the Prince and to the People, the letting out to farm, or the Administration of the Revenues?

THE administration of the revenues is like the conduct of a good father of a family, vention of the militia established almost all over Europe, and carry it to the same excess as they do the regular troops.

* See a *Treatise on the Roman Finances*, chap. 2. printed at Paris by Briasson, 1740. who

who collects his own rents himself with œconomy and order.

By the administration of the revenues the prince is at liberty to press or to retard the levy of the taxes, either according to his own wants, or to those of his people. By this he saves to the state the immense profits of the farmers, who impoverish it a thousand ways. By this he spares the people the mortifying sight of sudden fortunes. By this the money collected passes thro' few hands, goes directly to the treasury, and consequently makes a quicker return to the people. By this the prince avoids an infinite number of bad laws extorted from him continually by the importunate avarice of the farmers, who pretend to offer a present advantage for regulations pernicious to posterity.

As the moneyed man is always the most powerful, the farmer renders himself arbitrary even over the prince himself; he is not the legislator, but he obliges the legislator to give laws.

In republics, the revenues of the state are generally under administration. The contrary practice was a great defect in the Roman government *. In despotic governments, the people are infinitely happier where this administration is established; witness Persia and China (†). The unhappiest of all are those where the prince farms out his sea ports and trading cities. The history of monarchies

(†) See
Sir John
Chardin's
travels
thro' Per-
sia.

Tom. 6.

* Cæsar was obliged to remove the publicans from the province of Asia and to establish there another kind of administration, as we learn from Dio; and Tacitus informs us that Macedonia and Achaia, provinces left by Augustus to the people of Rome, and consequently governed pursuant to the ancient plan, obtained to be of the number of those which the emperor governed by his officers.

abounds

Book XIII.
Chap. 20. abounds with mischiefs done by the farmers of the revenues.

Nero incensed at the oppressive extortions of the publicans, formed a magnanimous but impossible project of abolishing all kinds of imposts. He did not think of an administration of the revenues, but made four edicts ; that the laws enacted against publicans, which had hitherto been kept secret, should be made public ; that they should not pretend to any thing which they had omitted to demand in the term of a year ; that there should be a prætor established to judge their pretensions without any formality ; and that the merchants should pay no duty for their vessels. These were the bright days of that emperor.

CHAP. XX.

Of the Farmers of the Revenues.

ALL is lost when the lucrative profession of farmers becomes likewise, by means of the riches with which it is attended, a post of honor. This may do well enough in despotic states, where their employment is oftentimes a part of the functions of the governors themselves. But it is by no means proper in a republic ; since a custom of the like nature destroyed the republic of Rome. Nor is it better in monarchies ; nothing being more opposite to the spirit of this government. All the other orders of the state are dissatisfied ; honor loses its whole value ; the slow and natural means of distinction are no longer regarded ; and the very principle of the government is subverted.

It is true indeed that scandalous fortunes were raised in former times; but this was one of the calamities of the fifty years war. These riches were then considered as ridiculous; now we admire them.

Every profession has its particular lot. The lot of those who levy the taxes is wealth, and the recompence of wealth is wealth itself. Glory and honor fall to the share of that nobility who neither know, see, nor feel any other happiness than honor and glory. Respect and esteem are for those ministers and magistrates, whose whole life is a continued succession of labour, and who watch day and night over the happiness of the empire.





B O O K XIV.

Of Laws as relative to the Nature of the Climate.

C H A P. I.

General Idea.

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IF it be true that the character of the mind, and the passions of the heart are extremely different in different climates, the laws ought to be relative both to the difference of those passions, and to the difference of those characters.

C H A P. II.

Of the Difference of Men in different Climates.

A C O L D air * constricts the extremities of the external fibres of the body ; this increases their elasticity, and favors the return of the blood from the extremities to the heart. It contracts † those very fibres ; consequently it increases also their force. On the contrary a warm air relaxes and lengthens the extremes of the fibres ; of course it diminishes their force and elasticity.

People are therefore more vigorous in cold climates. Here the action of the heart and the re-

* This appears even in the countenance : in cold weather people look thinner.

† We know it shortens iron.

action of the extremities of the fibres are better performed, the temperature of the humours is greater, the blood moves freer towards the heart, and reciprocally the heart has more power. This superiority of strength must produce a great many effects; for instance, a greater boldness, that is, more courage; a greater sense of superiority, that is, less desire of revenge; a greater opinion of security, that is, more frankness, less suspicion, policy, and cunning. In short this must be productive of very different characters. Put a man in a close warm place, and he will, for the reasons above given, feel a great faintness. If under this circumstance you propose a bold enterprize to him, I believe you will find him very little disposed towards it: his present weakness will throw him into a despondency of soul; he will be afraid of every thing, because he will feel himself capable of nothing. The inhabitants of warm countries are, like old men, timorous; the people in cold countries are, like young men, brave. If we reflect on the late * wars, which are more present to our memory, and in which we can better distinguish some slight effects that escape us at a great distance of time; we shall find that the northern people transplanted into southern countries †, did not perform such great feats as their countrymen, who fighting in their own climate possessed their full vigor and courage.

This strength of the fibres in northern nations is the cause that the coarsest juices are extracted from their aliments. From hence two things result:

* Those for the succession to the Spanish Monarchy.

† For instance to Spain.

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one that the parts of the chyle or lymph are more proper, by reason of their large surface, to be applied to, and to nourish, the fibres: the other, that they are less proper, because of their coarseness, to give a certain subtilty to the nervous juice. Those people have therefore large bodies and little vivacity.

The nerves that terminate from all parts in the cutis, form each a bundle of nerves; generally speaking, the whole nerve is not moved, but a very minute part. In warm climates where the cutis is relaxed, the ends of the nerves are opened and exposed to the smallest action of the weakest objects. In cold countries the cutis is constricted, and the papillæ compressed; the miliar glands are in some measure paralytic; and the sensation does not reach the brain but when it is very strong and proceeds from the whole nerve at once. Now imagination, taste, sensibility, and vivacity, depend on an infinite number of small sensations.

I have observed the outermost part of a sheep's tongue, where to the naked eye it seems covered with papillæ. On these papillæ, I have discerned thro' a microscope, small hairs or a kind of down; between the papillæ were pyramids shaped towards the ends like pincers. Very likely these pyramids are the principal organ of taste.

I caused the half of this tongue to be frozen, and observing it with the naked eye I found the papillæ considerably diminished: even some rows of the papillæ were sunk into their sheath. I examined the outermost part with the microscope, and I perceived no pyramids. In proportion as the frost went off, the papillæ seemed to the naked eye

to

to rise, and with the microscope the miliary glands began to appear.

This observation confirms what I have been saying, that in cold countries the nervous glands are less spread; they sink deeper into their sheaths, or they are sheltered from the action of external objects. Consequently they have not such lively sensations.

In cold countries, they have very little sensibility for pleasure; in temperate countries they have more; in warm countries their sensibility is exquisite. As climates are distinguished by degrees of latitude, we might distinguish them also, in some measure, by degrees of sensibility. I have seen the operas of England and of Italy; they are the same pieces and the same performers; and yet the same music produces such different effects on the two nations, one is so cold and indifferent, and the other so transported, that it seems almost inconceivable.

It is the same with regard to pain; which is excited by the laceration of some fibre of the body. The author of nature has made it an established rule that this pain should be more acute in proportion as the laceration is greater: now it is evident that the large bodies and coarse fibres of the people of the north are less capable of laceration than the delicate fibres of the inhabitants of warm countries; consequently the soul is there less sensible of pain. You must flay a Muscovite alive to make him feel.

From this delicacy of organs peculiar to warm climates, it follows, that the soul is most sensibly moved by whatever has a relation to the union of the two sexes: here every thing leads to this object.

THE SPIRIT

In northern climates scarce has the animal part of love a power of making itself felt. In temperate climates, love attended by a thousand appendages, renders itself agreeable by things that have at first the appearance of love, tho' not the reality. In warmer climates love is liked for its own sake, it is the only cause of happiness, it is life itself.

In southern countries a delicate, weak, but sensible machine, resigns itself either to a love which rises and is incessantly laid in a seraglio; or to a love which leaves women in a greater independence, and is consequently exposed to a thousand inquietudes. In northern climates a strong but heavy machine, finds a pleasure in whatever is apt to throw the spirits into motion, such as hunting, travelling, war, and wine. In northern countries, we meet with a people who have few vices, many virtues, a great share of frankness and sincerity. If we draw near the south, we fancy ourselves removed from all morality; the strongest passions multiply all manner of crimes, every one endeavouring to take what advantage he can over his neighbour, in order to encourage those passions. In temperate climates we find the inhabitants inconstant in their manners, in their very vices, and in their virtues: the climate has not a quality determinate enough to fix them.

The heat of the climate may be so excessive as to deprive the body of all vigor and strength. Then the faintness is communicated to the mind; there is no curiosity, no noble enterprize, no generous sentiment; the inclinations are all passive; indolence constitutes the utmost happiness; scarcely any punishment is so severe as the action of the soul, and
slavery

slavery is more supportable than the force and vigor of mind necessary for human action.

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C H A P. III.

Contradiction in the Characters of some Southern Nations.

THE Indians * are naturally a cowardly people; even the children † of the Europeans born in the Indies lose the courage peculiar to their own climate. But how shall we reconcile this with their cruel actions, with their customs, and penances so full of barbarity? The men voluntarily undergo the greatest hardships; the women burn themselves: here we find a very odd compound of fortitude and weakness.

Nature having framed those people of a texture so weak as renders them timid, has formed them at the same time of an imagination so lively, that every object makes the strongest impression upon them. That delicacy of organs which renders them apprehensive of death, contributes likewise to make them dread a thousand things more than death: the very same sensibility makes them fly, and dare, all dangers.

As a good education is more necessary to children than to those who are arrived to a maturity of understanding, so the inhabitants of those climates have much greater need than our people of a wise legislator. The greater their sensibility, the

* One hundred European soldiers, says Tarverner, would without any great difficulty beat a thousand Indian soldiers.

† Even the Persians, who settle in the Indies, contract in the third generation the indolence and cowardice of the Indians. See Bernier, on the Mogul, Tom. 1. p. 182.

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more it behoves them to receive proper impressions, to imbibe no prejudices, and to let themselves be directed by reason.

At the time of the Romans the inhabitants of the north of Europe lived without art, education, and almost without laws: and yet by the help of the good sense annexed to the gross fibres of those climates, they made an admirable stand against the power of the Roman empire, till that memorable period in which they quitted their woods to subvert it.

CHAP. IV.

Cause of the Immutability of Religion, Manners, Customs, and Laws, in the Eastern Countries.

IF that delicacy of organs which renders the eastern people so susceptible of every impression, is accompanied likewise with a sort of laziness of mind naturally connected with that of the body, by means of which they grow incapable of any action or effort; it is easy to comprehend, that when once the soul has received an impression she cannot change it. This is the reason, that the laws, manners * and customs, even those which seem quite indifferent, such as their manner of dress, are the same to this very day in eastern countries as they were a thousand years ago.

* We find by a fragment of Nicolaus Damascenus, collected by Constantine Porphyrog. that it was an ancient custom in the East to send to strangle a governor who had given any displeasure; it was in the time of the Medes.

C H A P. V.

That those are bad Legislators who favour the Vices of the Climate, and good Legislators who oppose those Vices.

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THE Indians believe that repose and non-existence are the foundation of all things, and the end in which they terminate. They consider therefore the state of intire inaction as the most perfect of all states, and the object of their desires. They give to the supreme Being * the title of Immoveable. The inhabitants of Siam believe that their utmost happiness ^(a) consists in not being obliged to animate a machine, or to give motion to a body.

^(a) La-
Loubere,
Relation
of Siam
p. 446.

In those countries where the excess of heat enervates and oppresses the body, rest is so delicious, and motion so painful, that this system of metaphysics seems natural; and † Foe the legislator of the Indies followed what he himself felt when he placed mankind in a state extremely passive: but his doctrine arising from the laziness of the climate, favoured it also in its turn; which has been the source of an infinite deal of mischief.

The legislators of China had more sense, when considering men not in the peaceful state which they are to enjoy hereafter, but in the situation proper for discharging the several duties of life,

* Pananad: See Kircher.

† Foe endeavoured to reduce the heart to a mere vacuum; "we have eyes and ears, but perfection consists in neither seeing nor hearing; a mouth, hands, &c. but perfection requires that these members should be inactive." This is taken from the dialogue of a Chinese philosopher, quoted by father Du Halde Tom. 3.

they made their religion, philosophy, and laws all practical. The more the physical causes incline mankind to inaction, the more the moral causes should estrange them from it.

CHAP. VI.

Of the cultivation of Lands in warm Climates.

THE cultivation of lands is the principal labour of man. The more the climate inclines them to shun this labour, the more their religion and laws ought to excite them to it. Thus the Indian laws, which give the lands to the prince, and destroy the spirit of property among the subjects, increase the bad effects of the climate, that is, their natural laziness.

CHAP. VII.

Of Monachism.

THE very same mischiefs result from monachism; it had its rise in the warm countries of the east, where they are less inclined to action than to speculation.

In Asia the number of dervises or monks seems to increase together with the heat of the climate. The Indies where the heat is excessive are full of them; and the same difference is found in Europe.

In order to surmount the laziness of the climate, the laws ought to endeavour to remove all means of subsisting without labour: But in the southern parts of Europe they act quite the reverse; to those who want to live in a state of indolence they afford retreats the most proper for a speculative

speculative life, and endow them with immense revenues. These men, who live in the midst of a plenty which they know not how to enjoy, are in the right to give their superfluities away to the common people. The poor are bereft of property; and these men indemnify them by supporting them in idleness, so as to make them even grow fond of their misery.

C H A P. VIII.

An excellent Custom of China.

THE historical relations ^b of China mention a ceremony * of opening the grounds, which the emperor performs every year. The design of this public and solemn act is to excite † the people to tillage.

(^b) Father Du Halde, history of China, tom. 2. p. 72.

Farther, the emperor is informed every year of the husbandman who has distinguished himself most in his profession; and he makes him a Mandarin of the eighth order.

Among the ancient Persians (^c) the kings quitted their grandeur and pomp on the eighth day of the month called *Chorrem-ruz* to eat with the husbandmen. These institutions were admirably well calculated for the encouragement of agriculture.

(^c) Hyde, religion of the Persians.

* Several of the kings of India do the same; relation of the kingdom of Siam by La Loubere p. 69.

† *Venty*, the 3d emperor of the 3d dynasty, tilled the lands himself, and made the empress and his wives employ their time in the silk-works in his palace. History of China.

CHAP. IX.

Means of encouraging Industry.

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WE shall shew in the nineteenth book that lazy nations are generally proud. Now the effect might well be turned against the cause, and laziness be destroyed by pride. In the south of Europe, where people have such a high notion of the point of honor, it would be right to give prizes to husbandmen who had cultivated best the lands, or to artists who had made the greatest improvements in their several professions. This practice has succeeded in our days in Ireland, where it has established one of the most considerable linen manufactures in Europe.

CHAP. X.

Of the Laws relative to the Sobriety of the People.

IN warm countries the aqueous part of the blood loses itself greatly by perspiration*; it must therefore be supplied by a like liquid. Water is there of admirable use; strong liquors would congeal the globules† of blood that remain after the transuding of the aqueous humour.

In cold countries the aqueous part of the blood

* Monsieur Bernier travelling from Lahor to Cachemir, wrote thus: *My body is a sieve; scarce have I swallowed a pint of water but I see it transude like dew out of all my limbs, even to my finger's ends. I drink ten pints a day, and it does me no manner of harm.* Bernier's travels, Tom. 2. p. 261.

† In the blood there are red globules, fibrous parts, white globules, and water in which the whole swims.

is very little evacuated by perspiration. They may therefore make use of spirituous liquors, without which the blood would congeal. They are full of humours; consequently strong liquors, which give a motion to the blood, are proper for those countries.

The law of Mahomet, which prohibits the drinking of wine, is therefore a law fitted to the climate of Arabia: and indeed before Mahomet's time, water was the common drink of the Arabs. The law ^(d) which forbad the Carthaginians to drink wine, was also a law of the climate; in fact the climate of those two countries is pretty near the same.

Such a law would be improper for cold countries, where the climate seems to force them to a kind of national drunkenness, very different from personal intemperance. Drunkenness predominates over all the world, in proportion to the coldness and humidity of the climate. Go from the Equator to our Pole, and you will find drunkenness increasing together with the degree of latitude. Go from the same equator to the opposite pole, and you will find drunkenness travelling south*, as on this side it travels towards the north.

It is very natural that where wine is contrary to the climate, and consequently to health, the excess of it should be more severely punished, than in countries where drunkenness produces very few bad effects to the person, fewer to the society, and where it does not make people mad, but only stupid and heavy. Hence laws † which punished

* This is seen in the Hottentots and the inhabitants of the most southern part of Chili.

† As Pittacus did, according to Aristotle, polit. lib. 1. c. 3. He lived in a climate where drunkenness is not a national vice.

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a drunken man both for the fault he committed, and for his drunkenness, were applicable only to a personal, and not to a national, ebriety. A German drinks thro' custom, and a Spaniard by choice.

In warm countries the relaxing of the fibres produces a great evacuation of the liquids, but the solid parts are less transpired. The fibres which act but weakly and have very little elasticity, are not much worn; a small quantity of nutritious juice is sufficient to repair them; for which reason they eat very little.

It is the difference of wants in different climates, that first formed a difference in the manner of living, and this difference of living gave rise to that of laws. Where people are very communicative, there must be particular laws; and others among people where there is but little communication.

CHAP. XI.

Of the Laws relative to the Distempers of the Climate.

(*)Book 2. **H**ERODOTUS (*) informs us, that the Jewish laws concerning the leprosy, were borrow'd from the practice of the Ægyptians. In fact, the same distemper required the same remedies. The Greeks and the primitive Romans were strangers to these laws, as well as to the disease. The climate of Ægypt and Palestine rendered them necessary; and the facility with which this disease is spread, is sufficient to make us sensible of the wisdom and sagacity of those laws.

Even we our selves have felt the effects of them. The Crusades had brought the leprosy amongst us; but

but the wise regulations made at that time hindered it from infecting the mass of the people.

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We find by the law of the (5) Lombards that this disease was spread in Italy before the crusades, and merited the attention of the legislators. Rotharis ordained that a leper should be expelled from his house and banished to a particular place, that he should be incapable of disposing of his property, because from the very moment he had been driven from home, he was reckoned dead in the eye of the law. In order to prevent all communication with lepers, they were rendered incapable of civil acts.

(5) Book

2. tit. 1.

§. 3. & tit.

18. §. 1.

I am apt to think that this disease was brought into Italy by the conquests of the Greek emperors, in whose armies there might be some soldiers from Palestine or Ægypt. Be that as it may, the progress of it was stopt till the time of the Crusades.

It is related that Pompey's soldiers returning from Syria brought a distemper home with them not unlike the leprosy. We have no account of any regulation made at that time; but it is highly probable that some regulation was made, since the distemper was stopped till the time of the Lombards.

It is now two centuries since a disease unknown to our ancestors, was first transplanted from the new world to ours, and came to attack human nature even in the very source of life and pleasure. Most of the principal families in the south of Europe were seen to perish by a distemper, that was grown too common to be ignominious, and was considered in no other light, than in that of its being fatal. It was the thirst of gold that propagated this disease; the Europeans went continually to America, and always brought back a new heaven of it.

As

As it is the business of legislators to watch over the health of the citizens, it would have been a wise part in them to have stopped this communication by laws made on the plan of those of *Moses*.

The plague is a disease whose infectious progress is much more rapid. *Ægypt* is its principal seat, from whence it spreads over the whole universe. Most countries in Europe have made exceeding good regulations to prevent this infection, and in our times an admirable method has been contrived to stop it; this is by forming a line of troops round the infected country, which cuts off all manner of communication.

(*) Ricaut
on the
Ottoman
empire, p.
284.

The Turks^(h), who have no regulations in this respect, see the Christians escape this infection in the same town, and none but themselves perish; they buy the cloaths of the infected, wear them, and go on their old way as if nothing had happened. The doctrine of a rigid fate, which directs their whole conduct, renders the magistrate a quiet spectator; he thinks that God has already done every thing, and that he himself has nothing to do.

C H A P. XII.

Of the Laws against Suicides.

WE do not find in history that the Romans ever killed themselves without a cause; but the English destroy themselves most unaccountably; they destroy themselves often in the very bosom of happiness. This action among the Romans was the effect of education; it was connected with their principles and customs: among the English

lish it is the effect of a * distemper ; it is connected with the physical state of the machine, and independent of every other cause.

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In all probability it is a defect of the filtration of the nervous juice ; the machine whose motive faculties are every moment without action, is weary of itself ; the soul feels no pain, but a certain uneasiness in existing. Pain is a local thing, which leads us to the desire of seeing an end of it ; the burthen of life is an evil confined to no particular place, which prompts us to the desire of ceasing to live.

It is evident that the civil laws of some countries may have reasons for branding suicide with infamy : but in England it cannot be punished without punishing the effects of madness.

C H A P. XIII.

Effects arising from the Climate of England.

IN a nation so distempered by the climate as to have a disrelish of every thing, nay even of life, it is plain that the government most suitable to the inhabitants, is that in which they cannot lay their uneasiness to any single person's charge, and in which being under the direction rather of the laws than of the prince, they cannot change the government without subverting the laws themselves.

And if this nation has likewise derived from the climate a certain character of impatience which renders them incapable of bearing the same train of things for any long continuance ; it is obvious

* It may be complicated with the scurvy, which in some countries especially, renders a man whimsical and unsupportable to himself. See Pirard's voyages part 2, chap. 21.

that

that the government above-mentioned is the fittest for them. This character of impatience is not very considerable of itself; but it may become so when joined with courage.

It is quite a different thing from levity, which makes people undertake or drop a project without cause; it borders more upon obstinacy, because it proceeds from so lively a sense of misery, that it is not weakened even by the habit of suffering.

This character in a free nation is extremely proper for disconcerting the projects of tyranny *, which is always slow and feeble in its commencements, as in the end it is active and lively; which at first only stretches out a hand to assist, and exerts afterwards a multitude of arms to oppress.

Slavery is ever preceded by sleep. But a people who find no rest in any situation, who continually explore every part, and feel nothing but pain, can hardly be lulled to sleep.

Politics are like a smooth file, which cuts slowly, and attains its end by a gradual and tedious progression. Now the people of whom we have been speaking, are incapable of bearing the delays, the details, and the coolness of negotiations: In these they are more unlikely to succeed than any other nation; hence they are apt to lose by treaties what they obtain by their arms.

* Here I take this word for the design of subverting the established power, and especially that of democracy; this is the signification in which it was understood by the Greeks and Romans.

C H A P. XIV.

Other Effects of the Climate.

OUR ancestors the ancient Germans lived under a climate, where the passions were extremely calm. Their laws decided only in such cases where the injury was visible to the eye, and went no further. And as they judged of the outrages done to men from the greatness of the wounds, they acted with no other delicacy in respect to the injuries done to women. The law of ⁽¹⁾ the Alemans on this subject is very extraordinary. If a person uncovers a woman's head, he pays a fine of fifty sous; if he uncovers her leg up to the knee, he pays the same; and double from the knee upwards. One would think that the law measured the insults offered to women as we measure a figure in geometry; it did not punish the crime of the imagination, but that of the eye. But upon the migration of a German nation into Spain, the climate soon found a necessity for different laws. The law of the Visigoths inhibited the surgeons to bleed a free woman, except either her father, mother, brother, son, or uncle was present. As the imagination of the people grew warm, so did that of the legislators; the law suspected every thing, when the people grew suspicious.

Book
XIV.
Chap. 14.

⁽¹⁾ Chap.
58 § 1,
& 2.

These laws had therefore a particular regard for the two sexes. But in their punishments they seem rather to humour the revengeful temper of private persons, than to exercise public justice. Thus in most cases they reduced both the criminals to be slaves to the offended relations or to the injured husband;
a free

BOOK a free-born woman (^k) who had yielded to the em-
 XIV. braces of a married man, was delivered up to his wife
 Chap. 15. to dispose of her as she pleased. They obliged the
 (^k) Law of slaves (^l) if they found their master's wife in adul-
 the Vifi- tery, to bind her, and carry her to her husband ;
 goths, book 3. they even permitted her children (^m) to be her
 tit. 4. §. 9. accusers, and her slaves to be tortured in order to
 (^l) Ibid. book 3. convict her. Thus their laws were far better
 tit. 4. §. 6. adapted to refine even to excess, a certain point of
 (^m) Ibid. book 3. tit. honor, than to form a good civil administration.
 4. §. 13. We must not therefore be surprized if count Ju-
 lian was of opinion that an affront of that kind
 ought to be expiated by the ruin of his king and
 country : we must not be surprized if the Moors,
 with such a conformity of manners, found it so easy
 a matter to settle and to maintain themselves in Spain,
 and to retard the fall of their empire.

C H A P. XV.

*Of the different Confidence which the Laws have
in the People, according to the Difference of
Climates.*

THE people of Japan are of so stubborn
 and perverse a temper, that neither their
 legislators nor magistrates can put any confidence
 in them: they set nothing before their eyes but
 judges, menaces, and chastisements; every step
 they take is subject to the inquisition of the civil
 magistrate. Those laws which out of five heads of
 families establish one as a magistrate over the other
 four; those laws which punish a family or a whole
 ward for a single crime; those laws in fine which find
 no one innocent where there may happen to be one
 guilty;

guilty; are made with a design to implant in all the people a distrust of each other, and to make every one the inspector, witness, and judge of his neighbour's conduct. Book
XIV.
Chap. 15.

On the contrary the people of India are mild ^(ⁿ), tender, and compassionate. Hence their legislators repose a great confidence in them. They have established ^(^o) very few punishments; these are not severe, nor are they rigorously executed. They have subjected nephews to their uncles, and orphans to their guardians, as in other countries they are subjected to their fathers; they have regulated the succession by the acknowledged merit of the successor. They seem to think that every individual ought to place an intire confidence in the good nature of his fellow subjects.

They infranchise their slaves without difficulty, they marry them, they treat them as their children *: happy climate which gives birth to innocence, and produces a lenity in the laws!

* This is perhaps what made Diodorus say, that in the Indies there was neither master nor slave.



BOOK XV.

In what manner the Laws of civil Slavery are relative to the Nature of the Climate.

CHAP. I.

Of civil Slavery.

BOOK
XV.
Chap. I.

SLAVERY, properly so called, is the establishment of a right which gives to one man such a power over another, as renders him absolute master of his life and fortune. The state of slavery is in its own nature bad. It is neither useful to the master nor to the slave; not to the slave, because he can do nothing thro' a motive of virtue; not to the master, because by having an unlimited authority over his slaves, he insensibly accustoms himself to the want of all moral virtues, and from thence grows fierce, hasty, severe, choleric, voluptuous, and cruel.

In despotic countries, where they are already in a state of political slavery, civil slavery is more tolerable than in other governments. Every one ought to be satisfied in those countries with necessities and life. Hence the condition of a slave is hardly more burdensome than that of a subject.

But in a monarchical government, where it is of the utmost importance that human nature should not be debased, or dispirited, there ought to

o be no slavery. In democracies, where they are all upon an equality; and in aristocracies, where the laws ought to use their utmost endeavours to procure as great an equality as the nature of the government will permit, slavery is contrary to the spirit of the constitution; it only contributes to give a power and luxury to the citizens which they ought not to have.

Book
XV.
Chap. 2.

C H A P. II.

Origin of the Right of Slavery among the Roman Civilians.

ONE would never have imagined that slavery should owe its birth to pity, and that this should have been excited three different ways (P).

(P) Justini-
an's Insti-
tutes,
book 1.

The law of nations, to prevent prisoners from being put to death, has allowed them to be made slaves. The civil law of the Romans empowered debtors, who were subject to be ill used by their creditors, to sell themselves. And the law of nature requires, that children, whom a father reduced to slavery is no longer able to maintain, should be reduced to the same state as the father.

These reasons of the civilians are all false. It is false that killing in war is lawful, unless in a case of absolute necessity: but when a man has made another his slave, he cannot be said to have been under a necessity of taking away his life, since he actually did not take it away. War gives no other right over prisoners than to disable them from doing any further harm, by securing their persons. All nations * concur in detesting the murdering of prisoners in cold blood.

* Excepting a few Canibals.

THE SPIRIT

2. Nor is it true, that a freeman can sell himself. Sale implies a price; now when a person sells himself, his whole substance immediately devolves to his master; the master therefore in that case gives nothing, and the slave receives nothing. You will say, he has a *peculium*. But this *peculium* goes along with his person. If it is not lawful for a man to kill himself, because he robs his country of his person, for the same reason he is not allowed to sell himself. The liberty of every citizen constitutes a part of the public liberty; and in a democratical state is even a part of the sovereignty. To sell one's citizenship * is so repugnant to all reason, as to be scarce supposeable in any man. If liberty may be rated with respect to the buyer, it is beyond all price to the seller. The civil law, which authorizes a division of goods among men, cannot be thought to rank among such goods, a part of the men who were to make this division. The same law annuls all iniquitous contracts; surely then it affords redress in a contract where the grievance is most enormous.

The third way is birth; which falls with the two former. For if a man could not sell himself, much less could he sell an unborn offspring. If a prisoner of war is not to be reduced to slavery, much less are his children.

✓ The lawfulness of putting a malefactor to death, arises from this; the law, by which he is punished, was made for his security. A murderer, for instance, has enjoyed the benefit of the very law which condemns him; it has been a continual pro-

* I mean slavery in a strict sense, as formerly among the Romans, and at present in our colonies.

tection to him; he cannot therefore object against it. But it is not so with the slave. The law of slavery can never be beneficial to him; it is in all cases against him, without ever being for his advantage; and therefore this law is contrary to the fundamental principle of all societies.

If it be pretended, that it has been beneficial to him, as his master has provided for his subsistence; slavery at this rate should be limited to those who are incapable of earning their livelihood. But who will take up with such slaves? As for infants, nature, who has supplied their mothers with milk, had provided for their sustenance, and the remainder of their childhood approaches so near the age in which they are most capable of being of service, that he who supports them cannot be said to give them an equivalent, which can intitle him to be their master.

Nor is slavery less opposite to the civil law than to that of nature. What civil law can restrain a slave from running away, since he is not a member of society, and consequently has no interest in any civil laws? He can be retained only by a family law, that is, by the master's authority.

C H A P. III.

Another Origin of the Right of Slavery.

I WOULD as soon say, that the right of slavery proceeds from the contempt of one nation for another, founded on a difference in customs.

THE SPIRIT

Lopez (^q) de Gamar relates, "that the Spaniards found near St. Martha, several baskets full of crabs, snails, grasshoppers, and locusts, which proved to be the ordinary provision of the natives. This the conquerors turned to a heavy charge against the conquered." The author owns that this, with their smoaking and trimming their beards in a different manner, gave rise to the law by which the Americans became slaves to the Spaniards.

Knowledge humanises mankind, and reason inclines to mildness; but prejudices eradicate every tender disposition.

CHAP. IV.

Another Origin of the Right of Slavery.

I WOULD as soon say that religion gives its professors a right to enslave those who dissent from it, in order to render its propagation more easy.

This was the notion that encouraged the ravagers of America in their iniquity (^r). Under the influence of this idea, they founded their right of enslaving so many nations; for these robbers, who would absolutely be both robbers and Christians, were superlatively devout.

Lewis XIII. (^r) was extremely uneasy at a law, by which all the Negroes of his colonies were to be made slaves; but it being strongly urged to him as the readiest means for their conversion, he acquiesced without further scruple.

(^r) See Hist. of the conquest of Mexico, by Solis, and that of Peru, by Garcilasso de La Vega
(^s) Labat's new voyage to the isles of America, vol. 4.
p. 114.
1722. in 12mo.

CHAP. V.

Of the Slavery of the Negroes.

WERE I to vindicate our right to make slaves of the Negroes, these should be my arguments. BOOK
XV.
Chap. 5.

The Europeans, having extirpated the Americans, were obliged to make slaves of the Africans for clearing such vast tracts of land.

Sugar would be too dear, if the plants which produce it were cultivated by any other than slaves.

These creatures are all over black, and with such a flat nose, that they can scarcely be pitied.

It is hardly to be believed that God, who is a wise Being, should place a soul, especially a good soul, in such a black ugly body.

It is so natural to look upon colour as the criterion of human nature, that the Asiatics, among whom eunuchs are employed, always deprive the *Blacks* of their resemblance to us, by a more opprobrious distinction.

The colour of the skin may be determined by that of the hair, which among the *Ægyptians*, the best philosophers in the world, was of such importance, that they put to death all the red-haired men who fell into their hands.

The Negroes prefer a glass necklace to that gold, which polite nations so highly value: can there be a greater proof of their wanting common sense?

It is impossible for us to suppose these creatures to be men, because allowing them to be men, a suspicion would follow, that we ourselves are not Christians.

THE SPIRIT

Weak minds exaggerate too much the wrong done to the Africans. For were the case as they state it, would the European powers, who make so many needless conventions among themselves, have failed to make a general one, in behalf of humanity and compassion?

CHAP. VI.

The true Origin of the Right of Slavery.

IT is time to enquire into the true origin of the right of slavery. It ought to be founded on the nature of things; let us see if there be any cases where it can be derived from thence.

In all despotic governments, people make no difficulty in selling themselves; the political slavery in some measure annihilates the civil liberty.

(^t) Present
State of
Russia.

According to Mr. Perry (^t), the Muscovites sell themselves very readily: their reason for it is evident; their liberty is not worth keeping.

(^u) Dampier's voy-
ages, Vol.
3.

At *Achim* every one is for selling himself. Some of the chief lords (^u) have not less than a thousand slaves, all principal merchants, who have a great number of slaves themselves, and these also are not without their slaves. Their masters are their heirs, and put them into trade. In those states, the free-men, being overpowered by the government, have no better resource than making themselves slaves to the tyrants in office.

This is the just and rational origin of that mild law of slavery, which obtains in some countries: and mild it ought to be, as founded on the free choice a man makes of a master, for his own benefit; which forms a mutual convention betwixt the two parties.

CHAP.

C H A P. VII.

Another Origin of the Right of Slavery.

TH E R E is another origin of the right of slavery, and even of the most cruel slavery, which is to be seen among men. B o o k
XV.
Ch. 7, & 8.

There are countries where the excess of heat enervates the body, and renders men so slothful and dispirited, that nothing but the fear of chastisement can oblige them to perform any laborious duty: slavery is there more reconcileable to reason; and the master being as lazy with respect to his sovereign, as his slave is to him, this adds a political, to a civil slavery.

Aristotle ^(x) endeavours to prove, that there are natural slaves, but what he says is far from proving it. If there be any such, I believe they are those of whom I have been speaking. (x) Polit.
Lib. I. c. 1.

But as all men are born equal, slavery must be accounted unnatural, tho' in some countries it be founded on natural reason; and a wide difference ought to be made betwixt such countries, and those where even natural reason rejects it, as in Europe, where it has been so happily abolished.

Plutarch, in his life of Numa, says, that in Saturn's time, there was neither slave nor master. Christianity has restored that age in our climates.

C H A P. VIII.

Inutility of Slavery among us.

N A T U R A L slavery, then, is to be limited to some particular parts of the world. In

all other countries, even the most laborious works of society may be performed by freemen.

Experience verifies my assertion. Before Christianity had abolished civil slavery in Europe, working in the mines was judged too toilsom for any but slaves or malefactors : but at present, there are men employed in them, who are known to live * happily. They have, by some small privileges, encouraged this profession ; to an increase of labour, they have joined an increase of gain ; and have gone so far as to make them better pleased with their condition than with any other which they could have embraced.

No labour is so heavy, but it may be brought to a level with the workman's strength, when regulated by equity, and not by avarice. The violent fatigues which slaves are made to undergo in other parts, may be supplied by commodious machines, invented by art, and skilfully applied. The Turkish mines in the Bannat of Temeswar, tho' richer than those of Hungary, did not yield so much ; because their invention reached no further, than the strength of their slaves.

✓ I know not whether this article be dictated by my understanding, or by my heart. Possibly there is not that climate upon earth, where the most laborious services might not, with proper encouragement, be performed by freemen. Bad laws having made lazy men ; they have been reduced to slavery, because of their laziness.

* As may be seen in the mines of Hartz in Lower Saxony, and in those of Hungary.

C H A P. IX.

Several Kinds of Slavery.

SL A V E R Y is of two kinds, real and personal. The real annexes the slave to the land, which Tacitus (y) makes the condition of slaves among the Germans. They were not employed in the family; a stated tribute of corn, cattle, or other moveables, paid to their master, was the whole of their servitude. And such a servitude still continues in Hungary, Bohemia, and several parts of lower Germany.

Book
XV.
Chap. 9.
(y) *De moribus Germanorum.*

Personal slavery consists in domestic services, and relates more to the master's person.

The worst degree of slavery is, when it is at once both real and personal, as that of the Helotes among the Lacedæmonians. They underwent the fatigues of the field, and suffered all manner of insults within the house. This Helotism is contrary to the nature of things. The real slavery is to be found only among nations * of a plain manner of living; all family business being done by the wives and children. The personal slavery is peculiar to voluptuous nations; luxury requiring the service of slaves in the house. But Helotism joins in the same persons the slavery established by voluptuous nations, and that of the most simple.

* Tacitus *de moribus German.* says, the master is not to be distinguished from the slave by any delicacy of living.

CHAP. X.

Regulations necessary in respect to Slavery.

BOOK
XV.
Chap. 10,
& 11.

BUT of whatsoever kind the slavery be, the civil laws should endeavour on the one hand to abolish the abuses of it, and on the other to guard against its dangers.

CHAP. XI.

Abuses of Slavery.

(¹) Sir John
Chardin's
travels to
Persia.

IN Mahometan states (²), not only the life and goods of female-slaves, but also what is called their virtue or honour, are at their master's disposal. One of the misfortunes of those countries, is, that the greatest part of the nation are born only to be subservient to the pleasures of the other. This servitude is alleviated by the laziness in which such slaves live; which is an additional disadvantage to the state.

(¹) Sir John
Chardin,
Vol. II. in
his de-
scription
of the
market of
Izagour.

It is this indolence which renders the (²) Eastern seraglios so delightful to those very persons whom they were made to confine. People who dread nothing but labour, may imagine themselves happy in these places of indolence and ease. But this shews how contrary they are to the very intent of the institution of slavery.

Reason requires that the master's power should not extend to what does not appertain to his service: Slavery should be calculated for utility, and not for pleasure. The laws of chastity arise from those of nature, and ought in all nations to be respected.

If

If a law which preserves the chastity of slaves, Book XV. Chap. 12. be good in those states where an arbitrary power bears down all before it, how much more will it be so in monarchies, and how much more still in republics?

The law of the Lombards ^(f) has a regulation ^(f) Lib. I. which ought to be adopted by all governments. ^{Tit. 32.}

“ If a master debauches his slave’s wife, the slave
“ and his wife shall be restored to their freedom.” ^{§ 5.}

An admirable expedient, which without severity lays a powerful restraint on the incontinency of masters.

The Romans seem to me to have erred on this head. They allowed an unlimited scope to the master’s lusts, and, in some measure, denied their slaves the privilege of marrying. It is true, they were the lowest part of the nation; yet there should have been some care taken of their morals; especially as in prohibiting their marriage, they corrupted the morals of the citizens.

C H A P. XII.

Danger from the Multitude of Slaves.

THE multitude of slaves has different effects in different governments. It is no grievance in a despotic state, where the political slavery of the whole body takes away the sense of civil slavery. Those who are called freemen, in reality are little more so than they who do not come within that class; and as the latter in quality of eunuchs, freedmen, or slaves, have generally the management of all affairs, the condition of a freeman and that of a slave are very nearly allied. This makes it therefore almost a matter of indifference

ference whether in such states the slaves be few or numerous.

But in moderate states, it is a point of the highest importance, that there should not be a great number of slaves. The political liberty of those states, adds to the value of civil liberty; and he who is deprived of the latter, is also deprived of the former. He sees the happiness of a society, of which he is not so much as a member; he sees the security of others fenced by laws, himself without any protection. He sees his master has a soul, that can enlarge itself; while his own is constrained to submit to a continual depression. Nothing more assimilates a man to a beast, than living among freemen, himself a slave. Such people as these are the natural enemies of the society, and their number must be dangerous.

It is not therefore to be wondered at, that moderate governments have been so frequently disturbed by revolts of slaves; and that this so seldom happens in * despotic states.

C H A P. XIII.

Of armed Slaves.

THE danger of arming slaves is not so great in monarchies as in republics. In the former a warlike people, and a body of nobility, are a sufficient check upon these armed slaves; whereas the pacific members of a republic would have a hard task to quell a set of men, who having offensive weapons in their hands, would find themselves a match for the citizens.

* The revolt of the Mammelucs was a different case; this was a body of the militia who usurped the empire.

The Goths who conquered Spain, spread themselves over the country, and soon became very weak. They made three important regulations; they abolished an ancient custom which prohibited intermarriages with the ^(g) Romans; they enacted that all the freedmen ^(h) belonging to the Fisc, should serve in war, under penalty of being reduced to slavery; and they ordained that each Goth should arm and bring into the field the tenth part ⁽ⁱ⁾ of his slaves. This was but a small proportion: besides, these slaves thus carried to the field, did not form a separate body; they were in the army, and might be said to continue in the family.

^(g) Law of the Visigoths, lib. 3. tit. 1. §. 1.
^(h) Ibid. lib. 5. tit. 7. §. 20.
⁽ⁱ⁾ Ibid. lib. 9. tit. 2. §. 9.

CHAP. XIV.

The same Subject continued.

WHEN a whole nation is of a martial temper, the slaves in arms are less to be feared.

By a law of the Alemans a slave who had committed a clandestine theft ^(k) was liable to the same punishment as a freeman in the like case; but if he was found guilty of a forcible robbery ^(l), he was only bound to restore the thing so taken. Among the Alemans, courage and intrepidity extenuated the guilt of an action. They employed their slaves in their wars. Most republics have been attentive to dispirit their slaves: but the Alemans relying on themselves, and being always armed, were so far from fearing theirs, that they were rather for augmenting their courage; they were the instruments either of their depredations or of their glory.

^(k) Law of the Alemans, c. 5. §. 3.
^(l) Law of the Alemans, c. 5. §. 5. *per virtutem.*

CHAP. XV.

Precautions to be used in moderate Governments.

BOOK
XV.
Chap. 15.

LENITY and humane treatment may prevent the dangers to be apprehended from the multitude of slaves in a moderate government. Men grow reconciled to every thing, and even to servitude, if not aggravated by the severity of the master. The Athenians treated their slaves with great lenity; and this secured that state from the commotions raised by the slaves among the austere Lacedæmonians.

It does not appear that the primitive Romans met with any trouble from their slaves. Those civil wars * which have been compared to the Punic wars, were the consequences of their having divested themselves of all humanity towards their slaves.

A frugal and laborious people generally use their slaves more kindly, than those who are above labour. The primitive Romans lived, worked, and eat with their slaves; they behaved towards them with great justice and humanity. The greatest punishment they made them suffer, was to make them pass before their neighbours with a forked piece of wood on their backs. Their manners were sufficient to secure the fidelity of their slaves; there was no necessity for laws.

But when the Romans aggrandized themselves; when their slaves were no longer the companions of their labour, but the instruments of their luxury and pride; as they then wanted morals, they had

* Sicily, says Florus, suffered more in the servile than in the Punic war. Lib. 3.

need of laws. It was even necessary for these laws to be of the most terrible kind, in order to establish the safety of those cruel masters, who lived in the midst of their slaves, as in the midst of enemies. They made the Sillanian *Senatus-Consultum*, and other laws ^(m) which decreed, that when a master was murdered, all the slaves under the same roof, or in any place so near the house, as to be within the hearing of a man's voice, should without distinction be condemned to die. Those who, in this case, sheltered a slave, in order to save him, were punished as ⁽ⁿ⁾ murderers; he whom his master * ordered to kill him, and who obeyed, was reputed guilty; even he who did not hinder him from killing himself, was liable to be punished ^(o). If a master was murdered on a journey, they put to death ^(p) those who were with him, and those who fled. All these laws took place even against those whose innocence was proved: the intent of them was to give their slaves a prodigious respect for their master. They were not dependent on the civil government, but on a fault or imperfection of the civil government. They were not derived from the equity of civil laws, since they were contrary to the principle of civil laws. They were properly founded on the principles of war, with this difference that the enemies were in the bosom of the state. The Sillanian *Senatus-Consultum* was derived from the law of nations, which requires that a society, however imperfect, should be preserved.

It is a misfortune in government when the ma-

* When Antony commanded Eros to kill him. it was the same as commanding him to kill himself, because if he had obeyed, he would have been punished as the murderer of his master.

gistracy

^(m) See the whole title of the *Senat. Conf. Syll.* in ff.

⁽ⁿ⁾ *Leg. si quis §. 12. ff. de Senat. Consult. Sillan.*

^(o) *Leg. 1. §. 22. ff. de Senat. Consult. Sillan.*

^(p) *Leg. 1. §. 31. ff. ibid.*

BOOK
XV.
Chap. 16.

gistracy thus find themselves under a necessity of making cruel laws; because they have rendered obedience difficult, they are obliged to increase the penalty of disobedience, or the suspicion of fidelity. A prudent legislator foresees the ill consequences of rendering the legislature terrible. The slaves amongst the Romans could have no confidence in the laws; and therefore the laws could have no confidence in them.

CHAP. XVI.

Regulations between Masters and Slaves.

THE magistrate ought to take care that the slave has his provisions and cloathing; and this ought to be regulated by law.

The laws ought to provide that care be taken of them in sickness and old age. Claudius⁽¹⁾ decreed, that the slaves, who, in sickness, had been abandoned by their masters, should, in case they recovered, be free. This law insured their liberty; but should not there have been some care also taken to preserve their lives?

When the law permitted a master to take away the life of his slave, he was invested with a power which he ought to exercise as judge, and not as master; it was necessary that the law should ordain those formalities which take away the suspicion of an act of violence.

(1) See law 3. in the Code de patriâ potestate, by the emperor Alexander.

When fathers, at Rome, were no longer permitted to put their children to death, the magistrates ordained the ⁽¹⁾ punishment which the father would have inflicted. A like custom between the master and his slaves would be highly reasonable in a country where masters have the power of life and death.

The

The law of Moses was extremely severe. "If any one struck his slave so that he died under his hand, he was to be punished; but if he survived a day or two, he was not, because he was as his money." Strange that a civil law should thus amongst these people relax the law of nature!

By a law of the Greeks ^(o) a slave too roughly treated by his master, might insist upon being sold to another. In the latter times there was a law of the same nature ^(p) at Rome. A master displeased with his slave, and a slave with his master, ought to be separated.

When a citizen uses a slave of another ill, the latter ought to have liberty to complain before the judge. The laws ^(q) of Plato and of most nations took away from slaves the right of natural defence. It was necessary then that they should give them a civil defence.

At Sparta, slaves could have no justice against either insults or injuries. So excessive was their misery, that they were not only the slaves of a citizen, but also of the public; they belonged to all, as well as to one. At Rome, when they considered the injury done to a slave, they had regard only to the * interest of the master. In the breach of the Aquilian law, they confounded a wound given to a beast, and that given to a slave; they regarded only the diminution of their value.

At Athens ^(r) he who had abused the slave of another, was punished severely, and sometimes even with death. The law of Athens was very reason-

* This was frequently the spirit of the laws of those nations, who came out of Germany, as may be seen by their codes.

Book XV. able, in not adding the loss of safety to that of
Chap. 17. liberty.

C H A P. XVII.

Of Infranchisements.

IT is easy to perceive that many slaves in a republican government create a necessity of making many free. The evil is, if they have too many slaves, they cannot keep them in due bounds; if they have too many freedmen they cannot live, and must become a burthen to the republic: besides it may be as much in danger from the too great number of freedmen, as from the too great number of slaves. It is necessary therefore that the laws should have an eye to these two inconveniencies.

(*) Annals
of Tacitus, lib.
13.

The several laws and decrees of the senate made at Rome, both for and against slaves, sometimes to limit, and at other times to facilitate their enfranchisement; plainly shew the embarrassment in which they found themselves in this respect. There were even times in which they durst not make laws. When under Nero (*) they demanded of the senate a permission for the masters to reduce again to slavery the ungrateful freedmen, the emperor declared that they ought to decide the affairs of individuals, and to make no general decree.

(†) Freinshemius's
Supplement, 2d
Decad.
lib. 5.

Much less can I determine what ought to be the regulations of a good republic in an affair of this kind; this depends on too many circumstances. Let us however make some reflections.

A considerable number of freedmen ought not suddenly to be made by a general law. We know that amongst the Volturnenses (†) the freedmen becoming
masters

masters of the suffrages, made an abominable law, which gave them the right of lying first with the girls married to the free-born.

Book
XV.
Chap. 17.

There are several ways of introducing insensibly new citizens into a republic. The laws may favour the acquiring a *peculium*, and put slaves into a condition of buying their liberty: they may give a term to servitude like those of Moses, which limited that of the ^(u) Hebrew slaves to six years. It is easy to give every year freedom to a certain number of those slaves who by their age, health, or industry, are capable of getting a subsistence. The evil may be even cured in its root: as a great number of slaves are connected with the several employments which are given them; to divide amongst the free-born a part of these employments, for example, commerce, or navigation, is diminishing the number of slaves.

^(u) Exodus
xxi.

When there are many freedmen, it is necessary that the civil laws should determine what they owe to their patron, or else that these duties should be fixed by the contract of enfranchisement.

It is certain that their condition should be more favoured in the civil, than in the political state; because, even in a popular government, the power ought not to fall into the hands of the vulgar.

At Rome, where they had so many freedmen, the political laws with regard to them, were admirable. They gave them little, and excluded them almost from nothing: they had even a share in the legislature, but the resolutions they were capable of taking were almost of no weight. They might bear a part in the public offices and even in the dignity of the priesthood ^(x); but this privilege was in

^(x) Annals
of Tacitus,
lib. 3.

Book
XV.
Chap. 18.

(7) Au-
gustus's
speech in
Dio, l. 56.

some sort rendered useless by the disadvantages they had to encounter with in the elections. They had a right to enter into the army; but they were to be registered in a certain class of the *census*, before they could be soldiers. Nothing hindered the (7) freedmen from being united by marriage with the families of the free-born; but they were not permitted to mix with those of the senators. In short their children were free-born, tho' they were not so themselves.

CHAP. XVIII.

Of Freedmen and Eunuchs.

THUS in a republican government, it is frequently of advantage, for the situation of the freedmen to be but little below that of the free-born, and that the laws be adapted to remove a dislike of their condition. But in a despotic government, where luxury and arbitrary power prevail, they have nothing to do in this respect; the freedmen almost always find themselves above the free-born. They rule in the court of the prince, and in the palaces of the great; and as they study the foibles, and not the virtues of their master, they lead him not by his virtues but by his weakness. Such were the freedmen of Rome in the times of the emperors.

When the principal slaves are eunuchs, let ever so many privileges be granted them, they can hardly be regarded as freedmen. For as they cannot have a family of their own, they are naturally attached to that of another; and it is only by a kind of fiction that they are considered as citizens.

And

And yet there are countries where the magistracy is intirely in their hands: "In * Tonquin, says "Dampier (²), all the mandarins civil and military "are eunuchs." They have no families, and tho' they are naturally avaricious, the master or the prince in the end takes advantage of this very avarice.

Book
XV.
Chap. 18.
(²) Vol. 3.

Dampier tells us too, that in this country, the eunuchs cannot live without women, and therefore marry. The law which permits their marriage, may be founded on the one hand, on their respect for these eunuchs, and on the other, on their contempt for women.

Thus they are trusted with the magistracy, because they have no family; and permitted to marry, because they are magistrates.

Then it is that the sense which remains, would fain supply that they have lost; and the enterprizes of despair become a kind of enjoyment. So in Milton, that spirit who has nothing left but desires, enraged at his degradation, would make use of his impotency itself.

We see in the history of China a great number of laws to deprive eunuchs of all civil and military employments; but they always returned to them again. It seems as if the eunuchs of the east were a necessary evil.

* It was formerly the same in China. The two Mahometan Arabs who travelled thither in the ninth century, use the word eunuch, whenever they speak of the governor of a city.



BOOK XVI.

*How the Laws of domestic Slavery have a
Relation to the Nature of the Climate.*

CHAP. I.

Of domestic Servitude.

BOOK
XVI.
Ch. 1, & 2.

SLAVES are established for the family ; but they are not a part of it. Thus I distinguish their servitude from that which the women in some countries suffer, and which I shall properly call domestic servitude.

CHAP. II.

That in the Countries of the South there is a natural Inequality between the two Sexes.

WOMEN, in hot climates, are * marriageable at eight, nine, or ten years of age ; thus, in those countries, infancy and marriage almost always go together. They are old at twenty : Their reason therefore never accompanies their beauty. When beauty demands the empire, the want of reason forbids the claim ; when reason is obtained, beauty

* Mahomet married Cadhisja at five, and took her to his bed at eight years old. In the hot countries of Arabia and the Indies, girls are marriageable at eight years of age, and are brought to bed the year after. *Prideaux, Life of Mahomet.* We see women in the kingdom of Algiers pregnant at nine, ten, and eleven years of age. *Hist. of the Kingdom of Algiers by Logiers de Tassis, p. 61,*

is no more. These women ought then to be in a state of dependance; for reason cannot procure in old age, that empire, which even youth and beauty could not give. It is therefore extremely natural that in these places, a man, when no law opposes it, should leave one wife to take another, and that polygamy should be introduced.

In temperate climates, where the charms of women are best preserved, where they arrive later at maturity, and have children at a more advanced season of life, the old age of their husbands in some degree follows theirs; and as they have more reason and knowledge at the time of marriage, if it be only on account of their having continued longer in life, it must naturally introduce a kind of equality between the two sexes, and, in consequence of this, the law of having only one wife.

In cold countries the almost necessary custom of drinking strong liquors, establishes intemperance amongst men. Women, who, in this respect, have a natural restraint, because they are always on the defensive, have therefore the advantage of reason over them.

Nature, which has distinguished men by their reason and bodily strength, has set no other bounds to their power than those of this strength and reason. It has given charms to women, and ordained that their ascendant over man shall end with these charms: But in hot countries, these are found only at the beginning, and never in the progress of life.

Thus the law which permits only one wife, is physically conformable to the climate of Europe, and not to that of Asia. This is the reason why Mahometanism was established with such facility

Book in Asia, and so difficultly extended in Europe;
 XVI. why Christianity is maintained in Europe, and has
 Ch 3, & 4. been destroyed in Asia; and in fine, why the Ma-
 hometans have made such progress in China, and
 the Christians so little.

(a) See Jo-
 nandes de
 Regno &
 tempor.

Succes. and
 the eccle-
 siastic

Historians

(b) See law

7. of the

Code de

Judæis &

Galiculis,

and Nov.

18. c. 5.

Some particular reasons induced Valentinian (a)
 to permit polygamy in the empire. That law, so
 improper for our climates, was abrogated (b) by
 Theodosius, Arcadius, and Honorius.

CHAP. III.

*That a Plurality of Wives depends greatly on the
 Means of supporting them.*

TH O' in countries where polygamy is once
 established, the number of wives is prin-
 cipally determined by the riches of the husband;
 yet it cannot be said that riches established poly-
 gamy in these states; since poverty may produce
 the same effect, as I shall prove when I come to
 speak of the savages.

Polygamy in powerful nations, is less a luxury in
 itself, than the occasion of great luxury. In hot *
 climates they have few wants, and it costs little to
 maintain a wife and children; they may therefore
 have a great number of wives.

CHAP. IV.

*That the Law of Polygamy is an Affair that de-
 pends on Calculation.*

ACCORDING to the calculations made
 in several parts of Europe, there are here

* In Ceylan a man may live on ten sols a month; they eat no-
 thing there but rice and fish. *Collection of voyages made to establish
 an India Company.*

born more boys than girls * ; on the contrary, by the accounts we have of Asia, there are there born more † girls than boys. The law which in Europe allows only one wife, and that in Asia which permits many, have therefore a certain relation to the climate.

In the cold climates of Asia, there are born as in Europe, more males than females ; and from hence, say the (c) Lamas, is derived the reason of that law, which amongst them, permits a woman to have || many husbands.

(c) Du
Halde's
Hist. of
China,
Vol. 4.

But it is difficult for me to believe that there are many countries, where the disproportion can be great enough for any exigency to justify the introducing either the law in favour of many wives, or that of many husbands. This would only imply, that a majority of women, or even a majority of men, is more conformable to nature in certain countries than in others.

I confess, that if what history tells us be true, that, at Bantam (d) there are ten women to one man, this must be a case particularly favourable to polygamy.

(d) Collec-
tion of
voyages
for the
establish-
ment of
an India
Company.
Vol. I.

In all this I only give their reasons, but do not justify their customs.

* Dr. Arbuthnot finds that in England the number of boys exceeds that of girls ; but people have been to blame to conclude that the case is the same in all climates.

† See Kempfer, who relates that upon numbering the people of Meaco, there were found 182072 males and 223573 females.

|| Albuzeit-el-hassen, one of the two Mahometan Arabs, who, in the ninth century, went into India and China, thought this custom a prostitution. And indeed nothing could be more contrary to the ideas of a Mahometan.

CHAP. V.

The Reason of a Law of Malabar.

BOOK
XVI.
Ch. 5, & 6.

IN the tribe of the * Naires, on the coast of Malabar, the men can have only one wife, while a woman, on the contrary, may have many husbands. The origin of this custom is not I believe difficult to discover. The Naires are the tribe of nobles, who are the soldiers of all those nations. In Europe, soldiers are forbid to marry: in Malabar, where the climate requires greater indulgence, they are satisfied with rendering marriage as little burthensome to them as possible; they give a wife amongst many men, which consequently diminishes the attachment to a family, and the cares of house-keeping, and leaves them in the free possession of a military spirit.

CHAP. VI.

Of Polygamy considered in itself.

WITH regard to polygamy in general, independently of the circumstances which may render it tolerable, it is not of the least service to mankind, nor to either of the two sexes, whether it be that which abuses, or that which is abused. Neither is it of service to the children; for one of its greatest inconveniencies is, that the father and mother cannot have the same affection for their off-

* See Francis Pirard, c. 27. Edifying Letters, 3d and 10th collection on the Malleami on the coast of Malabar. This is considered as an abuse of the military profession, as a woman, says Pirard, of the tribe of the Bramins never would marry many husbands.

spring; a father cannot love twenty children with the same tenderness as a mother can love two. It is much worse when a wife has many husbands; for then paternal love is only held by this opinion, that a father may believe, if he will, or that others may believe, that certain children belong to him.

May I not say that a plurality of wives leads to that passion which nature disallows? for one depravation always draws on another. I remember that in the revolution which happened at Constantinople, when sultan Achmet was deposed, history says, that the people having plundered the Kiaya's house they found not a single woman; they tell us that at ^(f) Algiers, in the greatest part of their seraglios, they have none at all.

^(f) Hist. of
Algiers by
Logier de
Tassis.

Besides, the possession of many wives does not always prevent their entertaining desires * for those of others: it is with lust as with avarice, whose thirst increases by the acquisition of treasures.

In the reign of Justinian, many philosophers, displeased with the constraint of Christianity, retired into Persia. What struck them the most, says Agathias^(t), was, that polygamy was permitted amongst men who did not even abstain from adultery.

^(t) Life
and ac-
tions of
Justinian,
P. 403.

C H A P. VII.

Of an Equality of Treatment in Case of many Wives.

FROM the law which permitted a plurality of wives followed that of an equal behaviour

* This is the reason why women in the east are so carefully concealed.

Book to each. Mahomet, who allowed of four, would
XVI. have every thing, as provisions, dress, and conjugal
Chap. 8. duty, equally divided between them. This law

(^u) See Pi- is also in force in the Maldivian isles (^v) where they
rard, c. 12. are at liberty to marry three wives.

(^w) Exod. The law of Moses (^w) even declares, that if any
xxi. 10, one has married his son to a slave, and this son
11. should marry afterwards a free woman, he shall di-
minish nothing of her food, her raiment, or respect.
They might give more to the new wife; but the
first was not to have less than she had before.

C H A P. VIII.

Of the Separation of Women from Men.

THE prodigious number of wives possessed by those who live in rich and voluptuous nations, is a consequence of the law of polygamy. Their separation from men, and their close confinement, naturally follow from the greatness of this number. Domestic order renders this necessary; thus an insolvent debtor seeks to conceal himself from the pursuit of his creditors. There are climates where the impulses of nature have such strength that morality has almost none. If a man be left with a woman, the temptation and the fall will be the same thing; the attack certain, the resistance none. In these countries, instead of precepts, they have recourse to bolts and bars.

One of the Chinese classic authors considers the man as a prodigy of virtue, who finding a woman alone in a distant apartment, can forbear making use of force*.

C H A P.

* "It is an admirable touch-stone, to find by one's self a treasure
" whose

C H A P. IX.

Of the Connexion between domestic and political Government.

IN a republic the condition of citizens is limited, equal, mild, and agreeable; every thing partakes of the benefit of public liberty. An empire over the women cannot, amongst them, be so well exerted; and where the climate demands this empire, it is most agreeable to a monarchical government. This is one of the reasons why it has always been difficult to establish a popular government in the east.

BOOK
XVI.
Chap. 9.

On the contrary the slavery of women is perfectly conformable to the genius of a despotic government, which delights in treating all with severity. Thus at all times have we seen in Asia domestic slavery and despotic government walk hand in hand with an equal pace.

In a government which requires, above all things, that a particular regard be paid to its tranquillity, and where the extreme subordination calls for peace, it is absolutely necessary to shut up the women; for their intrigues would prove fatal to their husbands. A government which has not time to examine into the conduct of its subjects, views them with a suspicious eye, only because they appear, and suffer themselves to be known.

Let us only suppose that the levity of mind,

“ whose master is known, or a beautiful woman in a distant apartment, or to hear the voice of an enemy who must perish without our assistance.” Translation of a Chinese piece of morality, which may be seen in Du Halde Vol. 3. p. 151.

the

BOOK
XVI.
Chap. 10.

the indiscretions, the tastes and disgusts of other women, attended by their passions of a higher, and a lower kind, with all their active fire, and in that full liberty with which they appear amongst us, were conveyed into an eastern government, where would be the father of a family who could enjoy a moment's repose? the men would be every where suspected, every where enemies; the state would be overturned, and the kingdom overflowed with rivers of blood.

CHAP. X.

The Principle on which the Morals of the East are founded.

IN the case of a multiplicity of wives, the more a family ceases to be united, the more ought the laws to reunite its detached parts in a common center; and the greater the diversity of interests, the more necessary it is for the laws to bring them back to a common interest.

This is more particularly done by confinement. The women should not only be separated from the men by the walls of the house; but they ought also to be separated in the same enclosure, in such a manner that each may have a distinct household in the same family. From hence each derives all that relates to the practice of morality, modesty, chastity, reserve, silence, peace, dependance, respect, and love, and in short, a general direction of her thoughts to that which in its own nature is a thing of the greatest importance, a single and intire attachment to her family.

Women

Women have naturally so many duties to fulfil, duties which are peculiarly theirs; that they cannot be enough excluded from every thing capable of inspiring other ideas; from every thing that goes by the name of amusements; and from every thing which we call business.

We find the manners more pure in the several parts of the east, in proportion as the confinement of women is more strictly observed. In great kingdoms, there are necessarily great lords. The greater their wealth, the more enlarged is their ability of keeping their wives in an exact confinement, and of preventing them from entering again into society. From hence it proceeds, that in the empires of Turkey, Persia, of the Mogul, China, and Japan, the manners of their wives are admirable.

But the case is not the same with India, where a multitude of islands, and the situation of the land, have divided the country into an infinite number of little states, which from causes that we have not here room to mention, are rendered despotic.

There are none there but the wretches who pillage, and the wretches who are pillaged. Their grandees have very moderate fortunes; and those whom they call rich, have only a bare subsistence. The confinement of their women cannot therefore be very strict; nor can they make use of any great precautions to keep them within due bounds; from hence it proceeds that the corruption of their manners is scarcely to be conceived.

We may there see to what an extreme, the vices of a climate, indulged in full liberty, will carry licentiousness. It is there that nature has a strength,
and

Book
XVI.
Chap. 11.
(*) Collection of
voyages
for the
establishment of
an India
Company
Vol. 2.
p. 2.

and modesty a weakness, that exceeds all comprehension. At Patan (*) the wanton desires * of the women are so outrageous, that the men are obliged to make use of a certain apparel to shelter them from their designs. In these countries, the two sexes lose even those laws which properly belong to each.

C H A P. XI.

Of domestic Slavery independently of Polygamy.

IT is not only a plurality of wives, which in certain places of the east requires their confinement; but also the climate itself. Those who consider the horrible crimes, the treachery, the black villanies, the poisonings, the assassinations, which the liberty of women has occasioned at Goa, and in the Portuguese settlements in the Indies, where religion permits only one wife; and who compare them with the innocence and purity of manners of the women of Turkey, Persia, Mogulstan, China, and Japan, will clearly see that it is frequently as necessary to separate them from the men, when they have but one, as when they have many.

These are things which ought to be decided by the climate. What purpose would it answer to shut up women in our northern countries, where their manners are naturally good; where all their passions are calm; and where love rules over

* In the Maldivian isles the fathers marry their daughters at ten and eleven years of age, because it is a great sin, say they, to suffer them to endure the want of a husband, see Pirard, c. 12. At Bantam as soon as a girl is twelve or thirteen years old, she must be married if they would not have her lead a debauched life. *Collection of Voyages for the establishment of an India Company*, p. 348.

the heart with so regular and gentle an empire, that the least degree of prudence is sufficient to conduct it ?

It is a happiness to live in those climates which permit a communication between each other, where that sex which has most charms seems to imbellish society, and where wives reserving themselves for the pleasures of one, contribute to the amusement of all.

C H A P. XII.

Of natural Modesty.

ALL nations are equally agreed in fixing contempt and ignominy on the incontinence of women. Nature has dictated this to all. She has established the attack, and she has established too the resistance ; and having implanted desires in both, she has given to the one boldness, and to the other shame. She has given to individuals a long extent of years in which they are to seek their own preservation ; but to perpetuate themselves, she has given only a moment.

It is then far from being true, that to be incontinent is to follow the laws of nature ; since this is, on the contrary, a violation of these laws, which can be followed only by modesty and discretion.

Besides, it is natural for intelligent beings to feel their imperfections. Nature has therefore fixed shame in our minds, a shame of our imperfections.

When therefore the physical power of certain climates violates the natural law of the two sexes, and that of intelligent beings ; it belongs to the legislature to make civil laws, to oppose the nature of the climate, and to re-establish the primitive laws.

CHAP. XIII.

Of Jealousy.

Book
XVI.
Chap. 13,
& 14.

WITH respect to nations we ought to distinguish between the passion of jealousy, and a jealousy arising from customs, manners, and laws. The one is a hot raging fever; the other, cold, but sometimes terrible, and may be joined with indifference and contempt.

The one, which is an abuse of love, derives its birth from love itself. The other depends only on manners, on the customs of a nation, on the laws of the country, and sometimes even on religion *.

It is almost always the effect of the physical power of the climate; and at the same time, the remedy of this physical power.

CHAP. XIV.

Of the Eastern Manner of domestic Government.

WIVES are changed so often in the east, that they cannot have the power of domestic government. This care is therefore committed to the eunuchs, whom they entrust with all their keys, and the management of all the household affairs. "In Persia, says Sir John Chardin, they give wives their cloaths, as we do to children." Thus that care which seems so well to become them, that care which every where else is the first of their cares, does not at all concern them.

* Mahomet desired his followers to watch their wives; a certain Imian when he was dying said the same thing; and Confucius preached the same doctrine.

C H A P. XV.

Of Divorce and Repudiation.

TH E R E is this difference between a di- Book
XVI.
Chap. 15.
vorce and a repudiation, that a divorce is
made by a mutual consent occasioned by a mu-
tual antipathy ; while a repudiation is made, by the
will and for the advantage of one of the two
parties, independently of the will and advantage of
the other.

The necessity there is sometimes for women to
repudiate, and the difficulty there always is in doing
it, render that law very tyrannical, which gives this
right to men, without giving it to women. A hus-
band is the master of the house ; he has a thousand
ways of keeping his wife to her duty, or of bring-
ing her back to it ; so that in his hands it seems as
if repudiation could be only a new abuse of power.
But a wife who repudiates only makes use of a dread-
ful kind of remedy. It is always a great misfortune
for her to go in search of a second husband, when she
has lost the most part of her attractions with an-
other. One of the advantages attending the charms
of youth in the female sex, is, that in an advanced
age the husband is led to complacency and love by
the remembrance of past pleasures.

It is then a *general rule*, that in all countries
where the laws have given to men the power of
repudiating, they ought also to give it to women.
Nay, in climates where women live in domestic
slavery, one would think that the law ought to per-
mit women the right of repudiation, and to husbands
only that of divorce.

When wives are confined in a seraglio, the husband ought not to repudiate on account of an opposition of manners ; it is the husband's fault if their manners are incompatible.

Repudiation because of the barrenness of the woman, ought never to take place but where there is only one wife ; when there are many, this is of no importance to the husband.

A law of the Maldivians * permitted them to take again a wife whom they had repudiated. A (i) Hist. of law of Mexico (i) forbade their being reunited under pain of death. The law of Mexico was more rational than that of the Maldivians : at the time even of the dissolution, it attended to the perpetuity of marriage ; instead of this, the law of the Maldivians seemed equally to sport with marriage and repudiation.

(i) Hist. of
the con-
quest of
Mexico
by Solis,
P. 499.

The law of Mexico admitted only of divorce. This was a particular reason for their not permitting those who were voluntarily separated, to be ever reunited. Repudiation seems chiefly to proceed from a hastiness of temper, and from the dictates of some of the passions ; while divorce appears to be an affair of deliberation.

Divorces are frequently of great political use ; but as to the civil utility they are established only for the advantage of the husband and wife, and are not always favourable to their children.

* They took them again preferably to any other, because, in this case, there was less expence. *Pirard's Travels.*

C H A P. XVI.

Of Repudiation and Divorce amongst the Romans.

ROMULUS permitted a husband to repudiate his wife, if she had committed adultery, prepared poison, or procured false keys. He did not give to women the right of repudiating their husbands. Plutarch ^(k) calls this, a law extremely severe.

BOOK
XVI.
Chap. 16.

^(k) Life of
Romulus.

^(l) This
was a law
of Solon.

As the Athenian law gave ^(l) the power of repudiation to the wife as well as to the husband, and as this right was obtained by the women amongst the primitive Romans, notwithstanding the law of Romulus; it is evident that this institution was one of those which the deputies of Rome brought from Athens, and which were inserted into the laws of the twelve tables.

Cicero * says that the reasons of repudiation sprung from the law of the twelve tables. We cannot then doubt but that this law increased the number of the reasons for repudiation established by Romulus.

The power of divorce was also an appointment, or at least a consequence of the law of the twelve tables. For from the moment that the wife or the husband had separately the right of repudiation, there was a much stronger reason for their having the power of quitting each other by mutual consent.

* *Mimam res suas sibi habere jussit, ex duodecim tabulis causam addidit.* Philip. 2d.

Book
XVI.
Chap. 16.

The law did not require that they should lay open the * causes of divorce. In the nature of the thing, the reasons for repudiation should be given, while those for a divorce are unnecessary; because whatever causes the law may admit as sufficient to break a marriage, a mutual antipathy must be stronger than them all.

The following fact mentioned by Dionysius Halicarnassensis ^(*), Valerius Maximus ⁽ⁿ⁾, and Aulus Gellius ^(o), does not appear to me to have the least degree of probability: tho' they had at Rome, say they, the power of repudiating a wife; yet they had so much respect for the auspices, that no body, for the space of five hundred and twenty years, ever made † use of this right, till Carvilius Ruga repudiated his, because of her sterility. We need only be sensible of the nature of the human mind, to perceive how very extraordinary it must be, for a law to give such right to a whole nation, and yet for no body to make use of it, Coriolanus setting out on his exile, advised his ^(p) wife to marry a man more happy than himself. We have just been seeing that the law of the twelve tables, and the manners of the Romans, greatly extended the law of Romulus. But to what purpose were these extensions, if they never made use of a power to repudiate? Besides, if the citizens had such a respect for the auspices, that they would never repudiate, how came the legislators

(*) See the speech of Veturia in Dionys. Halic. lib. 8.

* Justinian altered this, Nov. 117. c. 10.

† According to Dionys. Halic. and Valerius Maximus, and five hundred and twenty three according to Aulus Gellius, so also they did not agree in placing this under the same consuls.

of Rome to have less than they? and how came the laws incessantly to corrupt their manners?

All that is surprizing in the fact in question, will soon disappear, only by comparing two passages in Plutarch. The regal law ⁽¹⁾ permitted a husband to repudiate in the three cases already mentioned, and "it enjoined, says Plutarch ⁽²⁾, that he who repudiated in any other case, should be obliged to give the half of his substance to his wife, and that the other half should be consecrated to Ceres." They might then repudiate in all cases, if they were but willing to submit to the penalty. No body had done this before Carvilius Ruga *; who, as Plutarch says in another place ⁽³⁾, "put away his wife for her sterility two hundred and thirty years after Romulus." That is, she was repudiated seventy one years before the law of the twelve tables, which extended both the power and the causes of repudiation.

⁽¹⁾ Plutarch, life of Romulus.
⁽²⁾ Ibid.

⁽³⁾ In his comparison between Theseus and Romulus.

The authors I have cited say, that Carvilius Ruga loved his wife; but that the censors made him take an oath to put her away, because of her barrenness, to the end that he might give children to the republic; and that this rendered him odious to the people. We must know the genius and temper of the Romans, before we can discover the true cause of the hatred they had conceived for Carvilius. He did not fall into disgrace with the people for repudiating his wife; this was an affair that did not at all concern them. But Carvi-

* Indeed sterility is not a cause mentioned by the law of Romulus; but to all appearance, he was not subject to a confiscation of his effects, since he followed the orders of the censors.

BOOK lius had taken an oath to the censors, that because
XVI. of the sterility of his wife, he would repudiate
Chap. 16. her to give children to the republic. This was a
 yolk which the people saw the censors were go-
 ing to put upon them. I shall discover in the
 prosecution of this work ^(t), the repugnance which
^(t) **Book** they always felt for regulations of the like kind.
23. c. 21. We should explain the laws by the laws, and history
 by history.



B O O K XVII.

*How the Laws of political Servitude
have a Relation to the Nature of the
Climate.*

C H A P. I.

Of political Servitude.

POLITICAL servitude does not less depend on the nature of the climate, than that which is civil and domestic, and this we are going to make appear.

BOOK
XVII.
Ch. 1. & 2.

C H A P. II.

The Difference between Nations in point of Courage.

WE have already observed that great heat enervates the strength and courage of men, and that in cold climates they have a certain vigor of body and mind which renders them capable of long, painful, great, and intrepid actions. This remark holds true not only between one nation and another; but even in the different parts of the same country. In the north of China⁽¹⁾, people are more courageous than those in the south; and those in the south of Corea⁽²⁾ have less bravery than those in the north.

(1) Du
Halde
Vol. 1. p.
112.

(2) The
Chinese
books
make

We ought not then to be astonished that the effeminacy of the people in hot climates, has almost always rendered them slaves; and that the bravery

mention of
this, *ibid.*
Vol. 4. p.
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of those in cold climates has enabled them to maintain their liberties. This is an effect which springs from a natural cause.

This has also been found true in America; the despotic empires of Mexico and Peru were near the Line, and almost all the little free nations were and are still, near the Poles.

CHAP. III.

Of the Climate of Asia.

(*) See
travels to
the North,
Vol. 8.
the Hist. of
the Tar-
tars, and
Du Halde
Vol. 4.

THE relations of travellers (*) inform us, "that
" the vast continent of the north of Asia,
" which extends from forty degrees or thereabouts
" to the pole, and from the frontiers of Muscovy
" even to the eastern ocean, is in an extremely
" cold climate; that this immense tract of land is
" divided by a chain of mountains which run from
" west to east, leaving Siberia on the north, and
" Great Tartary on the south; that the climate
" of Siberia is so cold, that excepting some places
" it cannot be cultivated, and that tho' the Rus-
" sians have settlements all along the Irtis, they
" cultivate nothing; that in this country there
" grows only some little firs and shrubs; that the
" natives of the country are divided into wretched
" colonies, like those of Canada; that the reason
" of this cold proceeds on the one hand from the
" height of the land, and on the other, from the
" mountains, which, in proportion as they run from
" south to north, are levelled in such a manner, that
" the north wind every where blows without oppo-
" sition; that this wind which renders Nova Zem-
" bla uninhabitable, blowing in Siberia makes it
" a bar-

" a barren waste; that in Europe, on the contrary,
 " the mountains of Norway and Lapland are admi-
 " rable bulwarks which cover the northern countries
 " from the wind; so that at Stockholm, which is
 " about fifty nine degrees latitude, the earth pro-
 " duces plants, fruits, and corn; and that about
 " Abo, which is sixty one degrees, and even to
 " sixty three and sixty four, there are mines of
 " silver, and the land is fruitful enough.

We see also in these relations, " that Great
 " Tartary, which is to the south of Siberia, is
 " also exceeding cold; that the country cannot
 " be cultivated; that nothing can be found but
 " pasturage for their flocks and herds; that trees
 " cannot grow there, but only brambles, as in Ice-
 " land; that there are near China and India,
 " some countries where there grows a kind of mil-
 " let, but that neither corn nor rice will ripen;
 " that there is scarcely a place in Chinese Tartary
 " at forty three, forty four, and forty five degrees,
 " where it does not freeze seven or eight months
 " in the year, so that it is as cold as Iceland,
 " tho' it might be imagined from its situation to
 " be as hot as the south of France; that there are
 " no cities except four or five towards the eastern
 " ocean, and some which the Chinese, for poli-
 " tical reasons, have built near China; that in the
 " rest of great Tartary, there are only a few situ-
 " ated in Buchar, Turquestan, and Cathay; that
 " the reason of this extreme cold proceeds from
 " the nature of the nitrous earth, full of salt-
 " petre, and sand, and more particularly from
 " the height of the land. Father Verbieft found,
 " that a certain place eighty leagues north of the
 " great

“ great wall towards the source of Kavamhura,
 “ exceeded the height of the sea near Pekin three
 “ thousand geometrical paces; that this height *
 “ is the cause that tho’ almost all the great rivers
 “ of Asia have their source in this country, there
 “ is however so great a want of water, that it can
 “ be inhabited only near the rivers and lakes.”

These facts being laid down, I reason thus. Asia has properly no temperate zone, as the places situated in a very cold climate immediately touch upon those which are exceeding hot, that is Turkey, Persia, India, China, Corea, and Japan.

In Europe, on the contrary, the temperate zone is very extensive tho’ situated in climates widely different from each other; there being no affinity between the climates of Spain and Italy, and those of Norway and Sweden. But as the climate grows insensibly cold upon our advancing from south to north, nearly in proportion to the latitude of each country; it thence follows that each resembles the country joining to it, that there is no very extraordinary difference between them, and that, as I have just said, the temperate zone is very extensive.

From hence it comes, that in Asia the strong nations are opposed to the weak; the warlike, brave, and active people touch immediately on those who are indolent, effeminate, and timorous: the one must therefore conquer, and the other be conquered. In Europe, on the contrary, strong nations are opposed to the strong; and those who join to each other have nearly the same courage. This is the grand reason of the weakness of Asia, and of the strength of Europe; of the liberty of Europe,

* Tartary is then a kind of a flat mountain.

and of the slavery of Asia: A cause that I do not recollect ever to have seen remarked. From hence it proceeds, that liberty in Asia never increases; whilst in Europe it is enlarged or diminished according to particular circumstances.

The Russian nobility have indeed been reduced to slavery by the ambition of one of their princes; but they have always discovered those marks of impatience and discontent which are never to be seen in the southern climates. Have they not been able for a short time to establish an aristocratical government? Another of the northern kingdoms has lost its laws; but we may trust to the climate that they are not lost in such a manner as never to be recovered.

C H A P. IV.

The Consequences resulting from this.

WHAT we have just said, is perfectly conformable to history. Asia has been subdued thirteen times; eleven by the northern nations, and twice by those of the south. In the early ages it was conquered three times by the Scythians; afterwards it was conquered once by the Medes, and once by the Persians; again by the Greeks, the Arabs, the Moguls, the Turks, the Tartars, the Persians, and the Afghans. I mention only the upper Asia, and say nothing of the invasions made in the rest of the south of that part of the world, which has most frequently suffered prodigious revolutions.

In Europe, on the contrary, since the establishment of the Greek and Phœnician colonies we

know

know but of four great changes; the first caused by the conquest of the Romans; the second by the inundation of barbarians who destroyed these very Romans; the third by the victories of Charlemain; and the last by the invasions of the Normans. And if this be rightly examined, we shall find, even in these changes, a general strength diffused thro' all the parts of Europe. We know the difficulty which the Romans met with in conquering Europe, and the ease and facility with which they invaded Asia. We are sensible of the difficulties the northern nations had to encounter in overturning the Roman empire; of the wars, and labours of Charlemain; and of the several enterprizes of the Normans. The destroyers were incessantly destroyed.

C H A P. V.

That when the People in the North of Asia, and those of the North of Europe have conquered, the effects of the Conquest were not the same.

THE nations in the north of Europe conquered as freemen; the people in the north of Asia conquered as slaves, and subdued others only to gratify the ambition of a master.

The reason is, that the people of Tartary, the natural conquerors of Asia, are themselves enslaved. They are incessantly making conquests in the south of Asia, where they form empires; but that part of the nation which continues in the country, find that they are subject to a great master, who being despotic in the south, will also be so in the north, and exercising an arbitrary power over the conquered subjects, pretends to the same over those who are the

the conquerors. This is at this day plainly seen in that vast country called Chinese Tartary, which is governed by the emperor with a power almost as despotic as that of China itself, and which he every day extends by his conquests.

We may likewise see in the history of China, that the emperors (*) sent Chinese colonies into Tartary. These Chinese are become Tartars, and the mortal enemies of China; but this does not prevent their carrying into Tartary, the spirit of the Chinese government.

(*) As Vonty V. emperor of the fifth Dynasty.

A part of the Tartars who have conquered, have very often been themselves driven out; when they have carried into their deserts that servile spirit which they had acquired in the climate of slavery. The history of China furnishes us with great examples of this, as does also our ancient history.

From hence it proceeds that the genius of the Getic or Tartarian nation, has always resembled that of the empires of Asia. The people in these are governed by the cudgel; the people in Tartary by long whips. The spirit of Europe has always been contrary to these manners; and in all ages what the people of Asia have called punishment, the people of Europe have called the most outrageous abuse †.

The Tartars who destroyed the Grecian empire, established in the conquered countries, slavery and despotic power; the Goths conquering the Roman

* The Scythians three times conquered Asia, and were three times driven from thence. Justin, l. 2.

† This is no way contrary to what I shall say in the 28th book chap. 20. concerning the manner of thinking among the German nations, in respect to the cudgel; let the instrument be what it will, the power or action of beating, was always considered by them as an affront.

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empire every where founded monarchy and liberty.

I do not know whether the famous Rudbeck, who in his *Atlantica* has bestowed such praises on Scandinavia, has made mention of that great prerogative which ought to set this people above all the nations upon earth; namely this country's having been the source from whence sprung the liberties of Europe, that is of almost all the freedom which at present subsists amongst mankind.

Jornandez the Goth has called the north of Europe, the framer ^(b) of the human race. I should rather call it the framer of the instruments which broke the chains forged in the south. In the north were formed those valiant nations, which sallied forth and left their countries to destroy tyrants and slaves, and to teach men, that nature having made them equal, reason could not render them dependent except where it was necessary to their happiness.

^(b) *Humani
generis offi-
cinam.*

C H A P. VI.

*A new physical Cause of the Slavery of Asia,
and of the Liberty of Europe.*

IN Asia they have always had great empires; in Europe these could never subsist. Asia has larger plains; it is cut out into much more extensive divisions by mountains and seas; and as it lies more to the south, its springs are more easily dried up; the mountains are less covered with snow; and the rivers being not * so large, form smaller barriers.

* The waters lose themselves, or evaporate before or after their streams are united.

Power

Power in Asia ought then to be always despotic : for if their slavery was not severe, they would soon make a division, inconsistent with the nature of the country.

Book
XVII.
Chap. 7.

In Europe the natural division forms many nations of a moderate extent, in which the government of the laws is not incompatible with the maintenance of the state : on the contrary, it is so favourable to it, that without this the state would fall into decay, and become inferior to all others.

It is this which has formed a genius for liberty, that renders every part extremely difficult to be subdued and subjected to a foreign power, otherwise than by the laws and the advantage of commerce.

On the contrary there reigns in Asia a servile spirit, which they have never been able to shake off ; and it is impossible to find, in all the histories of this country, a single passage which discovers a free soul : we shall never see any thing there but the heroism of slavery.

C H A P. VII.

Of Africa and America.

THIS is what I had to say of Asia and Europe. Africa is in a climate like that of the south of Asia, and is in the same servitude. America * being destroyed and lately re-peopled by the nations of Europe and Africa, can now scarcely shew its true genius ; but what we know of its ancient history is very conformable to our principles.

* The petty barbarous nations of America are called by the Spaniards *Indios Bravos*, and are much more difficult to subdue than the great empires of Mexico and Peru.

BOOK XVIII.

Of Laws in the Relation they bear to the Nature of the Soil.

CHAP. I.

How the Nature of the Soil has an Influence on the Laws.

BOOK
XVIII.
Chap. I.

THE goodness of the land, in any country, naturally establishes subjection and dependence. The husbandmen who compose the principal part of the people, are not very jealous of their liberty; they are too busy and too intent on their own private affairs. A country which overflows with wealth, is afraid of pillage, afraid of an army.

“Who is there that forms this goodly party?”
(*)Lib. 17. “said Cicero to Atticus (*), are they the men of
“commerce and of husbandry? Let us not imagine
“that these are averse to monarchy, these to whom
“all governments are equal, as soon as they be-
“stow tranquillity.”

Thus monarchy is more frequently found in fruitful countries, and a republican government in those which are not so; and this is sometimes a sufficient compensation for the inconveniences they suffer by the sterility of the land.

The barrenness of the Attic soil, established there a popular government; and the fertility of that of Lacedæmonia an aristocratical form of government. For in those times, Greece was averse to the government of a single person; and aristocracy had the nearest resemblance to that government.

Plutarch

Plutarch says ^(b), that the Cilonian sedition having been appeased at Athens, the city fell into its ancient dissensions, and was divided into as many parties as there were kinds of territory in Attica. The men who inhabited the eminences, would by all means have a popular government; those of the plain, demanded a government composed of the chiefs; and they who were near the sea, were for a government made up of both.

C H A P. II.

The same Subject continued.

TH E S E fertile countries are always plains, where the inhabitants are unable to dispute against a stronger body: they are then obliged to submit, and when they have once submitted, the spirit of liberty cannot return; the wealth of the country is a pledge of their fidelity. But in mountainous countries, as they have but little, they may preserve what they have. The liberty they enjoy, or in other words, the government they are under, is the only blessing worthy of their defence. It reigns therefore more in mountainous and difficult countries, than in those which nature seems to have most favoured.

The mountaineers preserve a more moderate government; because they are not so liable to be conquered. They defend themselves easily, and are attacked with difficulty; ammunition and provisions are collected and carried against them with great expence, for the country furnishes none. It is then more difficult to make war against them, a more hazardous enterprize; and all the laws that

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can be made for the safety of the people are there of least use.

C H A P. III.

What Countries are best cultivated.

COUNTRIES are not cultivated in proportion to their fertility, but to their liberty; and if we make an imaginary division of the earth, we shall be astonished to see in most ages, deserts in the most fruitful parts, and great nations in those, where nature seems to refuse every thing.

It is natural for a people to leave a bad country to seek a better; and not to leave a good country to seek a worse. Most of the invasions have therefore been made in countries, which nature seems to have formed for happiness: and as nothing is more nearly allied than desolation and invasion, the best countries are most frequently depopulated; while the frightful countries of the north continue always inhabited, from their being almost uninhabitable.

We find by what historians tell us of the passage of the people of Scandinavia, along the banks of the Danube, that this was not a conquest, but only a migration into desert countries.

These happy climates must therefore have been depopulated by other migrations, tho' we know not the tragical scenes that happened.

" It appears by many monuments of antiquity, (c) Or he " says Aristotle (c), that the Sardinians were a Grecian colony. They were formerly very rich; and the book " Aristeus, so famed for his love of agriculture, De Mirabilibus. " was

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BOOK
XVIII.
Ch. 4, & 5.

“ was their lawgiver. But they are since fallen
“ to decay ; for the Carthaginians becoming their
“ masters, destroyed every thing proper for the
“ nourishment of man, and forbad the cultivation
“ of the lands on pain of death.” Sardinia was
not recovered in the time of Aristotle, nor is it to
this day.

The most temperate parts of Persia, Turkey,
Muscovy, and Poland, have not been able to
recover perfectly from the devastations of the
Tartars.

CHAP. IV.

New Effects of the Fertility and Barrenness of Countries.

THE barrenness of the earth renders men in-
dustrious, sober, inured to hardship, cou-
rageous and fit for war ; they are obliged to pro-
cure by labour what the earth refuses to bestow spon-
taneously. The fertility of a country gives ease, effe-
minacy, and a certain fondness for the preservation
of life. It has been remarked that the German troops
raised in those places where the peasants are rich, as
for instance, in Saxony, are not so good as the
others. Military laws may provide against this in-
convenience by a more severe discipline.

CHAP. V.

Of the Inhabitants of Islands.

THE people of the isles have a higher re-
lish for liberty than those of the continent.

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Islands are commonly of a small * extent ; one part of the people cannot be so easily employed to oppress the other ; the sea separates them from great empires ; so that they cannot be countenanced by tyranny : conquerors are stopped by the sea, the islanders themselves are not involved in conquests, and more easily preserve their laws.

C H A P. VI.

Of Countries raised by the Industry of Men.

THOSE countries which the industry of men has rendered habitable, and which stand in need of the same industry to provide for their subsistence, require a mild and moderate government. There are principally three of this species, the two fine provinces of Kianguan and Tchekiang in China, Ægypt, and Holland.

The ancient emperors of China were not conquerors. The first thing they did to aggrandize themselves, was what gave the highest proof of their wisdom. They raised from beneath the waters two of the finest provinces of the empire ; these owe their existence to the labour of man. And it is the inexpressible fertility of these two provinces which has given Europe such ideas of the felicity of this vast country. But a continual and necessary care to preserve from destruction so considerable a part of the empire, demanded rather the manners of a wise, than of a voluptuous nation ; rather the lawful authority of a monarch, than the tyrannic power of a despotic prince. Power was

* Japan is an exception to this, by its great extent as well as by its slavery.

therefore

heretofore necessarily moderated in that country, as it was formerly in Ægypt, and as it is still in that part of the Turkish empire. Power was necessarily moderated as it is in Holland, which nature has made to attend to herself, and not to be abandoned to negligence or caprice.

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XVIII.
Chap. 7.

Thus in spite of the climate of China, where they are naturally led to a servile obedience, in spite of the apprehensions which follow a too great extent of empire, the first legislators of this country were obliged to make most excellent laws, and the government was frequently obliged to follow them.

C H A P. VII.

Of the Works of Men.

MEN by their care, and by the influence of good laws have rendered the earth more proper for their abode. We see rivers flow where there have been lakes and marshes: this is a benefit which nature has not bestowed; but it is a benefit maintained and supplied by nature. When the Persians^(c) were masters of Asia, they permitted those who conveyed a spring to any place which had not been watered before, to enjoy the benefit for five generations; and as a number of rivulets flowed from mount Taurus, they spared no expence, in directing the course of their streams. At this day, without knowing how they came thither, they are found in the fields and gardens.

^(c) Polybius, l. 10.

Thus as destructive nations produce evils more durable than themselves; the actions of industrious nations are the source of blessings which last, when they are no more.

CHAP. VIII.

The general Relation of Laws.

BOOK
XVIII.
Ch. 8, & 9.

THE laws have a very great relation to the manner in which the several nations procure their subsistence. There should be a code of laws of a much larger extent, for a nation attached to trade and navigation, than for a people who are contented with cultivating the earth. There should be a much greater for these, than for a people who live by their flocks and herds. There must be a greater for this last, than for those who live by hunting.

CHAP. IX.

Of the Soil of America.

THE cause of there being so many savage nations in America is the fertility of the earth, which spontaneously produces many fruits capable of affording them nourishment. If the women cultivate a spot of land round their cabins, the maize grows up presently; and hunting and fishing put the men in a state of complete abundance. Besides, black cattle, as cows, buffaloes, &c. succeed there better than carnivorous beasts.

We should not, I believe, have all these advantages in Europe, if the land was left uncultivated; it would produce scarce any thing besides forests of oaks and other barren trees.

CHAP.

C H A P. X.

Of the Number of Men with regard to the manner in which they procure Subsistence.

LET us see in what proportion the number of men is found, in nations who do not cultivate the earth. As the produce of uncultivated land, is to the produce of land improved by culture; so the number of savages in one country, is to the number of husbandmen in another: and when the people who cultivate the land, cultivate also the arts, the number of savages is to the number of this people, in the compound proportion of the number of savages to that of the husbandmen; and of the number of husbandmen to that of men who cultivate the arts.

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XVIII.
Chap. 10,
& 11.

They can scarcely form a great nation. If they are herdsmen and shepherds, they have need of an extensive country to furnish subsistence for a small number; if they live by hunting, their number must be still less, and in order to find the means of life they must form a very small nation.

Their country is commonly full of forests; which, as the men have not the art of draining off the waters, are filled with bogs; here each troop canton themselves, and form a little nation.

C H A P. XI.

Of Savage Nations, and Nations of Barbarians.

THERE is this difference between savage and barbarous nations; the first are little dispersed nations, which, for some particular reason,

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son, cannot be united; and the barbarians are commonly small nations capable of being united. The first are generally nations of hunters; the second of herdsmen and shepherds. This appears plain in the north of Asia. The people of Siberia cannot live in bodies, because they cannot find subsistence; the Tartars may live in bodies for some time, because their herds and flocks may for a time be re-assembled. All the clans may then be re-united, and this is done when one chief has subdued many others; after which they may do two things, either separate, or set out with a design to make a great conquest in some empire in the south.

C H A P. XII.

Of the Law of nations amongst People who do not cultivate the Earth.

AS these people do not live in limited and circumscribed boundaries, many causes of strife arise between them; they dispute the uncultivated land, as we dispute about inheritances. Thus they find frequent occasions for war, in defence of their hunting, their fishing, the pasture for their cattle, and the taking of their slaves; and having no territory, they have many things to regulate by the law of nations, and but few to decide by the civil law.

C H A P. XIII.

Of the civil Laws of those nations who do not cultivate the Earth.

THE division of lands is what principally increases the civil code. Amongst nations where

where they have not made this division, there are very few civil laws.

BOOK
XVIII.
Chap. 14.

The institutions of these people may be called *manners* rather than *laws*.

Amongst such nations as these, the old men, who remember things past, have great authority; they cannot there be distinguished by wealth, but by wisdom and valour.

These people wander and disperse themselves in pasture grounds or in forests. Marriage cannot there have the security which it has amongst us, where it is fixed by the habitation, and where the wife continues in one house; they may then more easily change their wives, possess many, and sometimes mix indifferently like brutes.

Nations of herdsmen and shepherds cannot leave their cattle, which are their subsistence; neither can they separate themselves from their wives, who look after them. All this ought then to go together, especially as living generally in great plains, where there are few places of considerable strength, their wives, their children, their flocks may become the prey of their enemies.

Their laws regulate the division of plunder, and have, like our Salic laws, a particular attention to thefts.

C H A P. XIV.

Of the political State of the people who do not cultivate the Lands.

THESE people enjoy great liberty. For as they do not cultivate the earth, they are not fixed, they are wanderers and vagabonds; and if a chief would deprive them of their liberty, they would

BOOK
XVIII.
Chap. 15,
& 16.

would immediately go and seek it under another, or retire into the woods and live there with their families. The liberty of the man is so great among these people, that it necessarily draws after it the liberty of the citizen.

C H A P. XV.

Of People who know the Use of Money.

ARISTIPPUS being cast away, swam and got safe to the next shore; where seeing geometrical figures traced in the sand, he was seized with a transport of joy, judging that he was amongst Greeks, and not in a nation of barbarians.

Being alone, and cast by some accident amongst an unknown people; if you see a piece of money, be assured, that you are arrived in a civilized nation.

The culture of lands requires the use of money. This culture supposes many arts and degrees of knowledge; and we always see ingenuity, the arts, and a sense of want, making their progress with an equal pace. All this conduces to the establishment of a sign of value.

Torrents and eruptions * have made the discovery that metals were concealed in the earth. When they have once been separated, they have easily been applied to their proper uses.

C H A P. XVI.

Of civil Laws amongst People who know not the Use of Money.

WHEN a people have not the use of money, they are seldom acquainted with any other

* It is thus that Diodorus tells us the shepherds found gold in the Pyrenean mountains. injustice

injustice than that which springs from violence; and the weak, by uniting, defend themselves from its effects. They have nothing there but political regulations. But where money is established, they are subject to that injustice which proceeds from craft; an injustice that may be exercised a thousand ways. From hence they are forced to have good civil laws, which spring up with the new means, and the several methods of becoming wicked.

In countries where they have no money, the robber takes only bare moveables, which have no resemblance to each other. In countries where they make use of money, the robber takes the signs, and these always resemble each other. In the first nothing can be concealed, because the robber always takes along with him the proofs of his conviction; but in the others, it is quite the contrary.

C H A P. XVII.

Of political Laws amongst Nations who have not the Use of Money.

THE greatest security of the liberties of a people who do not cultivate the earth, is their not knowing the use of money. What is gained by hunting, fishing, or keeping herds of cattle, cannot be assembled in such great quantities, nor be sufficiently preserved, for one man to find himself in a condition to corrupt many others: but when, instead of this, a man has the sign of riches, he may obtain a large quantity of these signs, and distribute them amongst whom he pleases.

The people who have no money, have but few wants, and these are supplied both with ease, and
in

in an equal manner. Equality is then unavoidable; and from hence it proceeds, that their chiefs are not despotic.

C H A P. XVIII.

Of the Power of Superstition.

(^b) Edify-
ing let-
ters, 20th
Collect.

IF what travellers tell us be true, the constitution of a nation of Louisiana, called the Natches, is an exception to this. Their (^b) chief disposes of the goods of all his subjects, and makes them labour according to his pleasure. He has a power like that of the grand signor, and they cannot even refuse him their heads. When the presumptive heir enters into the world, they give him all the sucking children to serve him during his life. One would imagine that this is the great Sesostris. He is treated in his cabin, with as much ceremony as an emperor of Japan or China.

The prejudices of superstition are superior to all other prejudices, and its reasons to all other reasons. Thus, tho' the savage nations have naturally no knowledge of despotic tyranny, yet this people feel it. They adore the sun; and if their chief had not imagined that he was the brother of this glorious luminary, they would have thought him a miserable wretch like themselves.

C H A P. XIX.

Of the Liberty of the Arabs, and the Servitude of the Tartars.

THE Arabs and Tartars are nations of herdsmen and shepherds. The Arabs find themselves

selves in that general situation, of which we have been speaking, and are therefore free: whilst the Tartars (the most singular people on earth) are involved in a * political slavery. I have already given some reasons (c) for this, and shall now give others. (c) Book XVII. c.

They have no towns, they have no forests, and but few marshes; their rivers are almost always frozen, and they dwell in an immense plain. They have pasture for their herds and flocks, and consequently property; but they have no kind of retreat, or place of safety. A Khan is no sooner overcome than they cut off his † head; his children are treated in the same manner, and all his subjects belong to the conqueror. These are not condemned to a civil slavery; they would in that case be a burthen to a simple nation, who have no lands to cultivate, and no need of any domestic service. They therefore augment the nation; but instead of civil slavery, a political one must naturally be introduced amongst them.

It is apparent, that in a country where the several clans make continual war, and are perpetually conquering each other; in a country, where by the death of the chief, the body politic of the vanquished clan is always destroyed, the nation in general can enjoy but little freedom: for there is not a single party that must not have been a very great number of times subdued.

A conquered people may preserve some degree

* When a Khan is proclaimed, all the people cry: that his word shall be as a sword.

† We ought not therefore to be astonished at Mahomet the son of Miriveis, who, upon taking Ispahan, put all the princes of the blood to the sword.

T H E S P I R I T

of liberty, when by the strength of their situation, they are in a state, that will admit of their capitulating after their defeat. But the Tartars always defenceless, being once overcome, can never be able to stand upon conditions.

I have said in Chap. II. that the inhabitants of cultivated plains are seldom free. Circumstances have concurred to put the Tartars who dwell in uncultivated plains, in the same situation.

C H A P. XX.

Of the LAW OF NATIONS as practised by the Tartars.

THE Tartars appear to be mild and humane amongst themselves; and yet they are most cruel conquerors: when they take cities, they put the inhabitants to the sword, and imagine that they do them a favour when they sell them, or distribute them amongst their soldiers. They have destroyed Asia, from India, even to the Mediterranean; and all the country which forms the east of Persia they have made a desert.

This law of nations is owing, I think, to the following cause. This people having no towns, all their wars are carried on with eagerness and impetuosity. They fight whenever they hope to conquer; and when they have no such hopes; they join the stronger army. With such customs, it is contrary to their law of nations, that a city which cannot resist, should stop their progress. They regard not cities as an assembly of inhabitants, but as places made to set limits to their power. They besiege them without art, and expose

pose themselves greatly in their sieges; and therefore revenge themselves by the blood of all those who have spilt theirs.

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XVIII.
Chap. 21,
& 22.

C H A P. XXI.

The CIVIL LAW of the Tartars.

FATHER Du Halde says, that amongst the Tartars, the youngest of the males is always the heir, by reason that as soon as the elder are capable of leading a pastoral life, they leave the house with a certain number of cattle given them by the father, and go to build a new habitation. The last of the males who continues in the house with the father, is then his natural heir.

I have heard that a like custom was also observed in some small districts of England. This was doubtless a pastoral law conveyed thither by some of the people of Britany, or established by some German nation. We are informed by Cæsar and Tacitus, that these last cultivated but little land.

C H A P. XXII.

Of a CIVIL LAW of the German Nations.

I SHALL here explain how that particular passage of the Salic law, which is commonly distinguished by the term *The Salic Law*, relates to the institutions of a people who do not cultivate the earth, or at least who cultivate it but very little.

The Salic (^d) law ordains that when a man has left children behind him, the males shall succeed to the Salic land, to the prejudice of the females.

To understand the nature of those Salic lands, there needs no more than to search into the usages or customs with respect to land amongst the Franks before they came out of Germany.

Mr. Echard has very plainly proved that the word *Salic* is derived from *Sala*, which signifies a house; and, that therefore, the Salic land was the land of the house. I shall go farther, and examine what was the house, and what the land belonging to the house, among the Germans.

“ They dwell not in towns, says * Tacitus, nor
“ can they bear to have their houses joined to those
“ of others; every one leaves a space or small
“ piece of ground about his house, which is inclosed
“ and shut up.” Tacitus is very exact in this ac-

(*) The count; for many laws of the (c) Barbarian codes have different decrees against those who threw down this enclosure, as well as against those who broke into the house.

(c) The law of the Alemans, c. 10. and the law of the Bavarians, tit. 10. §. 1, and 2.

We learn from Tacitus and Cæsar, that the lands cultivated by the Germans, were given them only for the space of a year; after which they again became public. They had no other patrimony but the house and a piece of land, within the † inclosure that surrounded it. It was this particular patrimony which belonged to the males. And indeed how could it belong to the daughters? they were to pass into another house.

The Salic land was then within that enclosure, which belonged to a German house; this was the

* *Nullas Germanorum populis urbes habitari satis notum est, ne pati quidem inter se junctas sedes; colunt discreti, ut nemus placuit. Vicos locant, non in nostrum morem connexis & cohærentibus ædificiis, suam quisque domum spatio circumdat. De moribus Germanorum.*

† This enclosure is called *Cortis*, in the charters.

only

only property they had. The Franks after their conquests, acquired new possessions, and continued to call them Salic lands.

When the Franks lived in Germany, their wealth consisted of slaves, flocks, horses, arms, &c. the house and the small portion of land adjoining to it, were naturally given to the male children who were to dwell there. But afterwards when the Franks had by conquest acquired large divisions of land, they thought it hard, that the daughters and their children should be incapable of enjoying any part of them. They introduced a custom of permitting the father to recall his daughter, and her children. They silenced the law; and it appears that these recalls were frequent, since they were entered in the formularies ^(f)

Amongst all these formularies I find one ^(g) of a singular nature. A grandfather recalled his grandchildren to succeed with his sons and daughters. What then became of the Salic law? In those times either it could not be observed, or the continual use of recalling the daughters had made them regard their ability to inherit, as a case authorized by custom.

The Salic law had not in view a preference of one sex to the other, much less had it a regard to the perpetuity of a family, a name, or the transmission of land. These things did not enter into the heads of the Germans; it was purely a law of oeconomy which gave the house, and the land dependent on the house, to the males who should dwell in it, and to whom it consequently was of most service.

^(f) See Marculfus, l. 2. form. 10. & 12. Append. to Marculf. form. 49. and the ancient formularies of *Sirmondus* form. 22. ^(g) Form. 55. in Lindembrock's collection.

We need here only transcribe the title of the *Allodial lands* of the Salic law, that famous text of which so many have spoken, and which so few have read.

“ If a man dies without issue, his father or
“ mother shall succeed him. 2. If he has neither
“ father nor mother, his brother or sister shall
“ succeed him. 3. If he has neither brother nor
“ sister, the sister of his mother shall succeed him.
“ 4. If his mother has no sister, the sister of his
“ father shall succeed him. 5. If his father has
“ no sister, the nearest relation by the male shall
“ succeed. 6. Not * any part of the Salic land
“ shall pass to the females; but it shall belong to
“ the males, that is, the male children shall suc-
“ ceed their father.”

It is plain that the first five articles relate to the inheritance of a man who dies without issue; and the sixth to the succession of him who has children.

When a man dies without children, the law ordains that neither of the two sexes shall have the preference to the other, except in certain cases. In the two first degrees of succession, the advantages of the males and females were the same; in the third and fourth, the females had the preference, and the males in the fifth.

Tacitus gives us the seeds of these extravagancies:
“ The sister’s † children, says he, are as dear to

* *De terrâ verò Salicâ in mulierem nulla portio hereditatis transit, sed hoc virilis sexus acquirit, hoc est filii in ipsâ hereditate succedunt.* Tit. 62. §. 6.

† *Sororum filiis idem apud avunculum quam apud patrem honor. Quidam sanctiorem arctioremque hunc nexum sanguinis arbitrantur, & in accipiendis obsidibus magis exigunt, tanquam ii & animum firmitus & domum latius teneant.* De morib. Germanorum.

“ their

"their uncle as to their own father. There are men
"who regard this degree of kindred as more strict,
"and even more holy. They prefer it when they
"receive hostages." From hence it proceeds that
our earliest * historians speak in such strong terms of
the love of the kings of the Franks for their sisters,
and their sisters children. And indeed if the chil-
dren of the sister were considered in her brother's
house, as his own children, it was natural for these
to regard their aunt as their mother.

The sister of the mother was preferred to the
father's sister; this is explained by other texts of
the Salic law. When a ⁽¹⁾ woman was a widow, ⁽¹⁾ Salic
she fell under the guardianship of her husband's law, tit.
relations; the law preferred to this guardianship the 47.
relations by the females before those by the males. In-
deed a woman who entered into a family, joining her-
self with those of her own sex, became more united to
her relations by the female than by the male. Moreover,
when ^(m) a man had killed another, and had not ^(m) Ibid.
wherewithal to pay the pecuniary penalty he had tit. 61.
incurred, the law permitted him to deliver up his §. 1.
substance, and his relations were to supply what was
wanting. After the father, mother and brother,
the sister of the mother was to pay, as if this tie had
something in it most tender: Now the degree of kin-
dred which gives the burthens, ought to give also
the advantages.

The Salic law enjoins that after the father's sister,
the succession should be held by the nearest rela-
tion male; but if this relation was beyond the fifth

* See in Gregory of Tours, lib. 8. c. 18, and 20. and lib. 9.
c. 16, and 20. the rage of Gontram at Leovigild's ill treatment
of Ingunda his niece, which Childebert her brother took up arms
to revenge.

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Chap. 22.

degree, he should not inherit. Thus a woman of the fifth degree, might inherit to the prejudice of a male of the sixth: and this may be seen in the * law of the Ripuarian Franks, (a faithful interpretation of the Salic law) under the title of *Allodial lands*, where it follows step by step the Salic law on the same subject.

If the father left issue, the Salic law would have the daughters excluded from the inheritance of the Salic land, and that it should belong to the male children.

It would be easy for me to prove that the Salic law did not absolutely exclude the daughters from the possession of the Salic land, but only in the case where they were excluded by their brothers. This appears from the Salic law itself; which after having said that the women shall possess none of the Salic land, but only the males, interprets and restrains itself, by adding, "that is, the son shall succeed" "to the inheritance of the father."

(ⁿ) 56. 2. The text of the Salic law is cleared up by the law of the Ripuarian Franks, which has also a title (ⁿ) on allodial lands very conformable to that of the Salic law.

3. The laws of these barbarous nations, who all sprung from Germany, interpret each other, more particularly as they all have nearly the same spirit. The Saxon † law enjoined the father and mother to leave their inheritance to their son, and not to

* *Et deinceps usque ad quintum genuculum qui proximus fuerit in hereditatem succedas.* Tit. 56. §. 3.

† Tit. 7. §. 1. *Pater aut mater defuncti, filio non filia hereditatem relinquant; §. 4. qui defunctus, non filios, sed filias reliquerit, ad eas omnis hereditas pertineat.*

their

their daughter; but if there were none but daughters, they were to have the whole inheritance.

4. We have two ancient formularies ^(o) that state the case, in which according to the Salic law the daughters were excluded by the males, that is when they were in competition with their brother.

5. Another formulary ^(p) proves, that the daughter succeeded to the prejudice of the grandson; she was therefore excluded only by the son.

6. If daughters had been generally excluded by the Salic law from the inheritance of land, it would be impossible to explain the histories, formularies, and charters, which are continually mentioning the lands and possessions of the women, under the first race.

People ^(q) have been to blame to assert, that the Salic lands were fiefs. 1. This head is distinguished by the title of allodial lands. 2. Fiefs at first were not hereditary. 3. If the Salic lands had been fiefs, how could Marculfus treat that custom as impious which excluded the women from inheriting, when the males themselves did not succeed to fiefs? 4. The charters which have been cited to prove that the salic lands were fiefs, only prove that they were freeholds. 5. Fiefs were not established till after the conquest, and the Salic customs subsisted long before the Franks left Germany. 6. It was not the Salic law which by setting bounds to the succession of women formed the establishment of fiefs; but it was the establishment of fiefs that set limits to the succession of women, and to the regulations of the Salic law.

After what has been said, one would not imagine that the perpetual succession of the males to the crown of France should have taken its rise from the Salic

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^(o) In Marculfus, l. 2.

form. 12.

and in the

Appendix

to Marcul-

fus, form.

49.

^(p) Lin-

dem-

broch's

collection

form. 55.

^(q) Du-

cange, Pi-

thou, &c.

Book XVIII. Chap. 23. law. And yet this is a point indubitably certain. I prove it from the several codes of the barbarous nations. The Salic law ⁽¹⁾ and the law of the Burgundians ⁽¹⁾ refused the daughters the right of succeeding to the land in conjunction with their brothers; neither did they succeed to the crown. The law of the ⁽¹⁾ Visigoths, on the contrary, * permitted the daughters to inherit the land with the brothers; and the women were capable of inheriting the crown. Amongst these people the regulations of the civil law had an effect on the political.

⁽¹⁾ Tit. 1.
§. 3. tit.
14. §. 1,
& tit. 51.
⁽¹⁾ Lib. 4.
tit. 2. §. 1.

This was not the only case in which the political law of the Franks gave way to the civil law. By the Salic law all the brothers succeeded equally to the land, and this was also decreed by a law of the Burgundians. Thus in the kingdom of the Franks, and in that of the Burgundians, all the brothers succeeded to the crown; if we except a few murders and usurpations which took place amongst the Burgundians.

CHAP. XXIII.

Of the Ornaments of Royalty.

A PEOPLE who do not cultivate the land, have not so much as an idea of luxury. We may see in Tacitus the admirable simplicity of the German nations; the arts were not employed in their ornaments; these were founded in nature. If the family of their chief was to be distinguished by any sign, it was no other than that which nature bestowed. The kings of the Franks

* The German nations, says Tacitus, had common customs, and also those which were peculiar to each,

of the Burgundians, and the Visigoths, had their long hair for a diadem.

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Chap. 24,
& 25.

CHAP. XXIV.

Of the Marriages of the Kings of the Franks.

I HAVE already said, that with people who do not cultivate the earth, marriages are less fixed than with others, and that they generally take many wives. “The Germans were almost the only people of * all the barbarous nations, who were satisfied with one wife, if we except †, says Tacitus, some persons, who, not from a dissoluteness of manners, but because of their nobility, had many.”

This explains the reason why the kings of the first race had so great a number of wives. These marriages were less a proof of incontinence, than an attribute of dignity: and it would have wounded them in a tender point to have deprived them of such a prerogative (^u). This explains the reason why the example of the kings was not followed by the subjects.

(^u) See Fredegarius's chronicle of the year 628.

CHAP. XXV.

CHILDERIC.

“MARRIAGES amongst the Germans, says Tacitus, are strictly observed ||. Vice

* *Prope soli Barbarorum singulis uxoribus contenti sunt. De morib. Germanorum.*

† *Exceptis admodum paucis qui non libidine, sed ob nobilitatem, plurimis nuptiis ambiuntur. Ibid.*

|| *Severa matrimonia — nemo illic vitia ridet, nec corrumpere & corrumpi sæculum vocatur. De moribus Germanorum.*

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Chap. 26.

“ is not there a subject of ridicule. To corrupt
“ or be corrupted, is not called a point of fashion;
“ or a manner of spending life: there are few *
“ examples in this populous nation of the viola-
“ tion of conjugal faith.”

This was the reason of the expulsion of Childeric: he shocked their rigid virtue, which conquest had not had time to corrupt.

CHAP. XXVI.

Of the Time when the Kings of the Franks became of Age.

BARBARIANS who do not cultivate the earth, have, strictly speaking, no jurisdiction, and are, as we have already said, rather governed by the law of nations, than by civil laws. They are therefore always armed. Thus Tacitus tells us, “ that the Germans † undertook no affairs either “ of a public or private nature, unarmed.” They gave their || opinion by a sign with their arms ‡. As soon as they could carry them, they were presented to the assembly; they put a javelin § into their hands: from that moment they ** were out of their infancy; they had been a part of the family, now they became a part of the republic.

* *Paucissima in tam numerosâ gente adulteria.* Ibid.

† *Nilil neque publicæ neque privatæ rei nisi armati agunt.* Ibid.

|| *Si displicuit sententia, fremitu aspernantur; sin placuit, frameas concutiunt.* Ibid.

‡ *Sed arma sumere ante cuiquam moris quàm civitas suffecturum probaverit.*

§ *Tum in ipso concilio vel principum aliquis, vel pater, vel propinquus, scuto framæque juvenem ornant.*

** *Hæc apud illos toga, hic primus juventæ honos; ante hoc domus pars videntur, mox reipublicæ.*

Childebert

Childebert II. was * fifteen years old, when Gontram his uncle declared that he was of age, and capable of governing by himself. "I have put," says he †, this javelin into thy hands, as a token, that I have given thee all my kingdom ||;" and then turning towards the assembly, he added, "you see that my son Childebert is become a man; obey him."

We find in the Ripuarian laws, that the age of fifteen, the ability of bearing arms, and majority went together. It is there said ^(a), "that if a Ripuarian dies, or is killed, and leaves a son behind him, that son can neither prosecute, nor be prosecuted, till he has completely attained the age of fifteen; and then he may either answer for himself, or chuse a champion." It was necessary that his mind should be sufficiently formed, that he might be able to defend himself in court; and that his body should have all the strength that was proper for his defence in combat. Amongst the Burgundians ^(b), who also made use of combat in their judiciary proceedings, they were of age at fifteen. ^{(a) Tit. 81. (b) Tit. 87.}

Agathias tells us, that the arms of the Franks were light. They might therefore be of age at fifteen. In succeeding times the arms they made use of were heavy, and they were already greatly so in the time of Charlemain, as appears by our capi-

* He was scarcely five years old, says Gregory of Tours, l. 5. c. 1. when he succeeded to his father in the year 575. Gontram declares him of age in the year 585, he was therefore at that time no more than fifteen.

† *Gontramnus datâ in Childeberti manu hastâ dixit: hoc est indicium quod tibi omne regnum meum tradidi.* Ibid. l. 7. c. 33.

|| Gontram declared that his nephew Childebert, who was already king, was out of his minority, and besides he made him his heir.

tularies

tularies and romances. Those who * had fiefs, and were consequently obliged to do military service, were not then of age, till they were twenty one years old †.

C H A P. XXVII.

The same Subject continued.

WE have seen that the Germans did not appear in their assemblies, before they were of age; they were a part of the family but not of the republic. This was the reason that the children of Clodomir king of Orleans, and conqueror of Burgundy, were not declared kings, because they were of too tender an age to be present at the assembly. They were not yet kings, but they had a right to be kings as soon as they were able to bear arms; and in the mean time Clotildis their grandmother governed the state ‖. But their uncles Clotarius and Childebert assassinated them, and divided their kingdom. This action was the cause that in the following ages, princes in their minority were declared kings immediately after the death of their fathers. Thus duke Gondevald saved Childebert II. from the cruelty of Chilperic, and caused him to be declared king ‡ when he was only five years old.

* There was no change in the time in regard to the common people.

† St. Lewis was not of age till twenty one; this was changed by an edict of Charles V. in the year 1374.

‖ It appears from Gregory of Tours, l. 3. that she chose two natives of Burgundy, which had been conquered by Clodomir, to raise them to the see of Tours, which also belonged to Clodomir.

‡ Gregory of Tours, l. 5. c. 1. *vix lustro ætatis uno jam per-
acto, qui die Dominicæ Natalis regnare cepit.*

But

But even in this change they followed the original spirit of the nation; for the acts did not pass in the name of the young king. So that the Franks had a double administration, the one which concerned the person of the infant king, and the other which regarded the kingdom; and in the fiefs there was a difference between the guardianship and the civil administration.

CHAP. XXVIII.

Of the sanguinary Temper of the Kings of the Franks.

CLOVIS was not the only prince amongst the Franks who had invaded Gaul. Many of his relations had entered this country with particular tribes; but as he had much greater success, and could give considerable establishments to those that followed him, the Franks ran to him from all the tribes, so that the other chiefs found themselves too weak to resist him. He formed a design of exterminating his whole race, and he succeeded ⁽¹⁾. ^{(1) Gregory of Tours, l. 2.} He feared, says Gregory of Tours ⁽²⁾, lest the Franks should chuse another chief. His children and successors followed this practice to the utmost ^{(1) Ibid.} of their power. Thus the brother, the uncle, the nephew, and what is still worse, the father or the son, were perpetually conspiring against their whole family. The law continually divided the monarchy; while fear, ambition, and cruelty, wanted to reunite it.

Of the national Assemblies of the Franks.

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XVIII.
Chap. 29.

IT has been remarked above, that nations who do not cultivate the land enjoy great liberty. This was the case of the Germans. Tacitus says, that they gave their kings, or chiefs, a very moderate degree of power * ; and Cæsar adds farther †, that in times of peace, they had no common magistrates ; but their princes distributed justice in each
(^u) Lib. 2. village. Thus, as Gregory of Tours (^v) sufficiently proves, the Franks in Germany had no king.

“ The princes, says Tacitus ||, deliberate on
“ small matters ; while affairs of great importance
“ are laid before the whole nation ; but in such a
“ manner, that these very affairs, which are under
“ the cognizance of the people, are at the same
“ time laid before the princes.” This custom was observed by them after their conquests, as may be seen ‡ in all their records.

Tacitus says §, that capital crimes might be carried before the assembly. It was the same after the conquest, when the great vassals were tried before that body.

* *Nec Regibus libera aut infinita potestas. Cæterum neque animadvertere, neque vincere, neque verberare, &c. De morib. Germ.*

† *In pace nullus est communis magistratus, sed principes regionum atque pagorum inter suos jus dicunt. De bello Gall. lib. 6.*

|| *De minoribus principes consultant, de majoribus omnes ; ita tamen ut ea quorum penes plebem arbitrium est, apud principes pertractentur. De morib. Germ.*

‡ *Lex consensu Populi fit & constitutione Regis. Capitularies of Charles the Bald, Anno 864. art. 6.*

§ *Licet apud Concilium accusare & discrimen capitis intendere. De morib. Germ.*

C H A P. XXX.

Of the Authority of the Clergy under the first Race.

THE priests of barbarous nations are commonly invested with power, because they have both that authority which is due to them from their religious character, and that influence which amongst such a people arises from superstition. Thus we see in Tacitus, that priests were held in great veneration by the Germans, and that they presided * in the assembly of the people. They alone were permitted † to chastise, to bind, to smite; which they did, not by order of the prince, or as his ministers of justice; but as by an inspiration of that Deity who was always supposed to be present with those who made war.

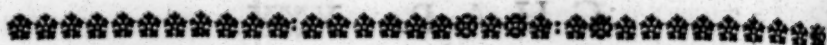
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Chap. 30.

We ought not to be astonished if from the very beginning of the first race, we see bishops the dispensers of (x) justice, if we see them appear in the assemblies of the nation, if they have such a prodigious influence on the minds of kings, and if they acquire so large a share of property.

(x) See the
constitu-
tions of
Clotarius
in the
year 560.
art. 6.

* *Silentium per sacerdotes, quibus & coercendi jus est, imperatur.*
De morib. Germ.

† *Nec legibus libera aut infinita potestas. Cæterum neque animadvertere, neque vincere, neque verberare, nisi sacerdotibus est permis-
sum, non quasi in pœnam, nec Ducis jussu, sed velut Deo imperante, quem adesse bellatoribus credunt.* De morib. Germ.



B O O K XIX.

*Of Laws in Relation to the Principles
which form the general Spirit, the
Morals and Customs of a Nation.*

C H A P. I.

Of the Subject of this Book.

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Ch. 1, & 2.

THIS subject is of a great extent. In that crowd of ideas which present themselves to my mind, I shall be more attentive to the order of things, than to the things themselves. I shall be obliged to wander to the right and to the left, that I may search into and discover the truth.

C H A P. II.

That it is necessary People's Minds should be prepared for the Reception of the best Laws.

NOTHING could appear more insupportable to the Germans * than the tribunal of Varus. That which Justinian ^(a) erected amongst the Lazi, to proceed against the murderers of their king, appeared to them as an affair the most horrid and barbarous. Mithridates ^(b) haranguing against the Romans reproached them more particu-

^(a) Agathias, lib. 4.

^(b) Justin l. 38.

* They cut out the tongues of the advocates, and cried: Viper don't hiss. Tacitus.

larly for their ^(c) formalities of justice. The Par-
 thians could not bear with one of their kings, who hav-
 ing been educated at Rome, rendered himself affable
 and † easy of access to all. Liberty itself has ap-
 peared insupportable to those nations who have not
 been accustomed to enjoy it. Thus a pure air is
 sometimes disagreeable to those who have lived in a
 fenny country.

Balbi, a Venetian, being at ^(d) Pegu, was intro-
 duced to the king. When the monarch was in-
 formed that they had no king at Venice, he burst
 into such a fit of laughter, that he was seized with
 a cough, and had much ado to speak to his courtiers.
 What legislator could propose a popular government
 to a people like this?

C H A P. III.

Of Tyranny.

T H E R E are two sorts of tyranny; the one
 real, which arises from the oppressions of
 government; the other is seated in opinion, and is
 sure to be felt whenever those who govern, establish
 things shocking to the turn of thought, and incon-
 sistent with the ideas of a nation.

Dio tells us, that Augustus was desirous of be-
 ing called Romulus; but having been informed,
 that the people feared, that he would cause him-
 self to be crowned king, he changed his design.
 The old Romans were averse to a king; because
 they could not suffer any man to enjoy such pow-
 er: these would not have a king, because they

† *Prompti aditus, nova comitas, ignotæ Parthis virtutes, nova vitia.* Tacitus.

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 (c) *Calumniaslitium.*
 ibid.

(d) He has
 described
 this inter-
 view
 which
 happened
 in the
 year 1596.
 in the
 Collec-
 tion of
 voyages
 for the
 establish-
 ment of
 an India
 Company.
 Vol. 3.
 part 1.
 P. 33.

could not bear his manners. For tho' Cæsar, the Triumvirs, and Augustus, were really kings, they had preserved all the outward appearance of equality, while their private lives were a kind of contrast to the pomp and luxury of foreign monarchs ; so that when they were resolved to have no king, this only signified that they would preserve their customs, and not take up those of the African and eastern nations.

The same writer informs us, that the Romans were exasperated against Augustus for making certain laws which were too severe : but as soon as he had recalled Pylades the comedian, whom the jarring of different factions had driven out of the city, the discontent ceased. A people of this stamp have a more lively sense of tyranny when a player is banished, than when they are deprived of all their laws.

C H A P. IV.

Of the general Spirit of Mankind.

MEN are influenced by various causes, by the climate, the religion, the laws, the maxims of government, by precedents, morals and customs ; from whence is formed a general spirit which takes its rise from these.

In proportion, as in every nation any one of these causes acts with more force, the others in the same degree become weak. Nature and the climate rule almost alone over the savages ; customs govern the Chinese ; the laws tyrannize in Japan ; morals had formerly all their influence at Sparta ; maxims of government, and the ancient simplicity of manners, once prevailed at Rome.

C H A P. V.

How far we should be attentive lest the general Spirit of a Nation should be changed.

I F in any part of the world there had been a nation whose inhabitants were of a sociable temper, open hearted, pleased with life, possessed of judgment, and a facility in communicating their thoughts; who were sprightly, agreeable, gay, sometimes imprudent, often indiscreet; and besides had courage, generosity, frankness, and a certain point of honor; no one ought to endeavour to restrain their manners by laws, unless he would lay a constraint on their virtues. If in general the character is good, the little faults that may be found in it, will be of small importance.

BOOK
XIX.
Chap. 5.

They might lay a restraint upon women, make laws to correct their manners, and to limit their luxury: but who knows but that by this means, they might lose that peculiar taste which would be the source of the riches of the nation, and that politeness which would render the country frequented by strangers?

It is the business of the legislature to follow the spirit of the nation, when it is not contrary to the principles of government; for we do nothing so well as when we act with freedom, and follow the bent of our natural genius.

If an air of pedantry be given to a nation that is naturally gay, the state will gain no advantage from it, either at home or abroad. Leave it to do frivolous things in the most serious manner, and with gaiety things the most serious.

CHAP. VI.

That every Thing ought not to be corrected.

BOOK
XIX.
Ch. 6,&7.

LET them but leave us as we are, said a gentleman of a nation which had a very great resemblance to that we have been describing, and nature will repair whatever is amiss. She has given us a vivacity capable of offending, and hurrying us beyond the bounds of respect: this same vivacity is corrected by the politeness it procures us, inspiring a taste for the world, and above all, for the conversation of women.

Let them leave us as we are; our indiscretions joined to our good nature, would make the laws which should constrain our sociable temper, not at all proper for us.

CHAP. VII.

Of the Athenians and Lacedæmonians.

THE Athenians, this gentleman adds, were a nation that had some relation to ours. They mingled gaiety with business; a stroke of raillery was as agreeable in the senate, as in the theatre. This vivacity, which discovered itself in their councils, went along with them in the execution of their resolves. The characteristic of the Spartans was gravity, seriousness, severity, and silence. It would have been as difficult to bring over an Athenian by teasing, as it would a Spartan by diverting him.

CHAP.

C H A P. VIII.

Effects of a sociable Temper.

TH E more communicative a people are, the more easily they change their habits, because each is in a greater degree a spectacle to the other; and the singularities of individuals are better seen. The climate which makes one nation delight in being communicative, makes it also delight in change; and that which makes it delight in change, forms its taste.

BOOK
XIX.
Ch. 8, & 9.

The society of women spoils the manners, and forms the taste; the desire of giving greater pleasure than others, establishes the ornaments of dress; and the desire of pleasing others more than ourselves establishes fashions. The mode is a subject of importance: by giving a trifling turn of mind, it continually encreases the branches of its commerce (^e).

(*) Fable of
the bees.

C H A P. IX.

Of the Vanity and Pride of Nations.

VANITY is as advantageous to a government, as pride is dangerous. To be convinced of this, we need only represent on the one hand, the numberless benefits which result from vanity; from thence arises luxury, industry, arts, fashions, politeness, taste: and on the other, the infinite evils which spring from the pride of certain nations, laziness, poverty, a universal neglect, the destruction of the nations which have accidentally fallen into their hands, as well as of their

BOOK
XIX.
Chap. 9.

own. Laziness * is the effect of pride; labour a consequence of vanity: the pride of a Spaniard leads him to refuse labour; the vanity of a Frenchman to know how to work better than others.

All lazy nations are grave; for those who do not labour, regard themselves as the sovereigns of those who do.

If we search amongst all nations, we shall find that for the most part, gravity, pride, and indolence go hand in hand.

(f) See
Dampier,
Vol. 3.

The people of Achim (f) are proud and lazy; those who have no slaves hire one, if it be only to carry a quart of rice a hundred paces; they would be dishonoured if they carried it themselves.

In many places people let their nails grow, that all may see they do not work.

(g) Edify-
ing Let-
ters, 12th
Collect.
p. 80.

Women in the Indies (g) believe it shameful for them to learn to read: this is, they say, the business of the slaves, who sing their spiritual songs in the temples of their pagods. In one tribe they don't spin; in another they make nothing but baskets and mats; they are not even to pound rice; and in others they must not go to fetch water. These rules are established by pride, and the same passion makes them followed.

* The people who follow the Khan of Malacamber, those of Carnataca and Coromandel, are proud and indolent; they consume little because they are miserably poor; while the subjects of the Mogul, and the people of Indostan, employ themselves and enjoy the conveniences of life like the Europeans. *Collection of Voyages for the Establishment of an India Company*. Vol. 1. p. 54.

C H A P. X.

Of the Characters of the Spaniards and Chinese.

THE characteristics of the several nations are formed of virtues and vices, of good and bad qualities. From the happy mixture of these, great advantages result, and frequently where it would be least expected; there are others from whence great evils arise, evils which one would not suspect. Book XIX.
Chap. 10.

The Spaniards have been in all ages famous for their honesty. Justin ^(h) mentions their fidelity in keeping whatever was intrusted to their care; they have frequently suffered death rather than reveal a secret. They have still the same fidelity for which they were formerly distinguished. All the nations who trade to Cadiz, trust their fortunes to the Spaniards, and have never yet repented it. But this admirable quality joined to their indolence, forms a mixture from whence such effects result as to them are the most pernicious. The people of Europe carry on in their very sight all the commerce of their monarchy. (b) Lib. 43.

The character of the Chinese is formed of another mixture, directly opposite to that of the Spaniards. The precariousness of their subsistence*, inspires them with a prodigious activity, and such an excessive desire of gain, that no trading nation can confide in them ⁽ⁱ⁾. This acknowledged infidelity has secured them the possession of the trade to Japan. No European merchant has ever dared to undertake it in their name, how easy soever it might be for (i) Du Halde, Vol. 2.

* By the nature of the soil and climate.

BOOK them to do it from their maritime provinces in the
 XIX. north.
 Chap. 11,
 & 12.

C H A P. XI.

A Reflection.

I HAVE said nothing here with a view to lessen that infinite distance, which there must ever be between virtue and vice. God forbid, that I should be guilty of such an attempt ! I would only make my readers comprehend that all political, are not moral vices, and that all moral, are not political vices ; and that those who make laws which shock the general spirit of a nation, ought not to be ignorant of this.

C H A P. XII.

Of Customs and Manners in a despotic State.

IT is a capital maxim, that the manners and customs of a despotic empire ought never to be changed ; for nothing would more speedily produce a revolution. The reason is that in these states there are no laws, that is, none that can be properly called so, there are only manners and customs ; and if you overturn these, you overturn all.

Laws are established, manners are inspired ; these proceed from a general spirit, those, from a particular institution : now it is as dangerous, nay more so, to overturn the general spirit, as to change a particular institution.

There is less communication in a country where each, either as superior or inferior, exercises or suffers an arbitrary power, than there is in those where liberty

liberty reigns in every station. They do not therefore so often change their manners and behaviour. Fixed and established customs have a near resemblance to laws. Thus it is here necessary that a prince or a legislator should less oppose the manners and customs of the people, than in any other country upon earth.

Their women are commonly confined, and have no influence in society. In other countries where they live with men, their desire of pleasing, and the desire men also have of giving them pleasure, produce a continual change of customs. The two sexes spoil each other, they both lose their distinctive and essential quality; what was naturally fixed becomes quite unsettled, and their customs and behaviour change every day.

C H A P. XIII.

Of the Behaviour of the Chinese.

BUT China is the place where the customs of the country can never be changed. Besides their women being absolutely separated from the men, their customs, like their morals, are taught in the schools. A man of (^k) letters may be known by his easy address. These things being once taught by precept, and inculcated by grave doctors, become fixed, like the principles of morality, and are never changed.

(^k) Du
Halde.

C H A P. XIV.

What are the natural Means of changing the Manners and Customs of a Nation.

BOOK
XIX.
Chap. 14:

WE have said that the laws were the particular and precise institutions of a legislator, and manners and customs the institutions of a nation in general. From hence it follows, that when these manners and customs are to be changed, it ought not to be done by laws; this would have too much the air of tyranny: it would be better to change them by introducing other manners and other customs.

Thus when a prince would make great alterations in his kingdom, he should reform by laws what is established by laws, and change by customs what is established by customs; for it is very bad policy to change by laws, what ought to be changed by customs.

The law which obliged the Muscovites to cut off their beards, and to shorten their cloaths, and the rigour with which Peter I. made them crop even to the knees, the long cloaks of those who entered into the cities, were instances of tyranny. There are means that may be made use of to prevent crimes, these are punishments: there are those for changing our customs, these are examples.

The facility and ease with which this nation has been polished, plainly shews that this prince had a worse opinion of his people than they deserved, and that they were not brutes tho' he was pleased to call them so. The violent measures which he employed

employed were needless; he would have attained his end as well by milder methods.

BOOK
XIX.
Chap. 14.

He himself experienced the easiness of bringing about these alterations. The women were shut up, and in some sort slaves; he called them to court; he sent them silks and stuffs, and made them dress like the German ladies. This sex immediately relished a manner of life which so greatly flattered their taste, their vanity, and their passions, and by their means it was relished by the men.

What rendered the change the more easy was, their manners being at that time foreign to the climate; and their having been introduced amongst them by conquest, and by a mixture of nations. Peter I. in giving the manners and customs of Europe to an European nation, found a facility which he did not himself expect. The empire of the climate is the first, the most powerful of all empires.

He had then no occasion for laws to change the manners and customs of his country; it would have been sufficient to have introduced other manners and other customs.

Nations are in general very tenacious of their customs; to take them away by violence is to render them unhappy: we should not therefore change them, but engage the people to make the change themselves.

All punishment which is not derived from necessity, is tyrannical. The law is not a mere act of power; things in their own nature indifferent are not within its province.

C H A P. XV.

The Influence of domestic Government on the political.

BOOK
XIX.
Chap. 15,
& 16.

THE changing the manners of women had, without doubt, a great influence on the government of Muscovy. One thing is very closely united to another: the despotic power of the prince is naturally connected with the servitude of women, the liberty of women with the spirit of monarchy.

C H A P. XVI.

How some Legislators have confounded the Principles which govern Mankind.

MANNERS and customs are those habits which are not established by the laws, either because they were not able, or were not willing to establish them.

There is this difference between laws and manners, that the laws are most adapted to regulate the actions of the subject, and manners to regulate the actions of the man. There is this difference between manners and customs, that the first principally relate to the interior conduct, the others to the exterior.

These things * have been sometimes confounded. Lycurgus made the same code for the laws, manners, and customs; and the legislators of China have done the same.

We ought not to be surprized, that the legislators of China and Sparta should confound the laws,

* Moses made the same code for laws and religion. The old Romans confounded the ancient customs with the laws.

man-

manners, and customs: the reason is, their manners represent their laws, and their customs their manners.

Book
XIX.
Chap. 16.

The principal object which the legislators of China had in view, was to make the people live in peace and tranquillity. They would have people filled with a veneration for one another, that each should be every moment sensible how greatly he was indebted to others, and that there was not a subject who did not in some degree depend on another subject. They therefore gave rules of the most extensive civility.

Thus the inhabitants of the (^m) villages of China, observe amongst themselves the same ceremonies, as those observed by persons of an exalted station: a very proper method of inspiring mild and gentle dispositions, of maintaining peace and good order amongst the people, and of banishing all the vices which spring from an asperity of temper. In effect, would not the freeing them from the rules of civility, be to search out a method for them to indulge their faults more at ease?

(^m) See
Du Halde.

Civility is in this respect of more value than politeness. Politeness flatters the vices of others, and civility prevents ours from being brought to light. It is a barrier which men have placed in themselves to prevent the corruption of each other.

Lycurgus, whose institutions were severe, had no regard to civility, in forming the external behaviour; he had a view to that warlike spirit which he would fain give to his people. A people who were ever correcting, or ever corrected, always instructing, or always instructed, endued with equal

BOOK XIX. simplicity and rigor, atoned by their virtues, for their want of complaisance.
Chap. 17.

C H A P. XVII.

Of the peculiar Quality of the Chinese Government.

(ⁿ) See the
Classic
books
from
which fa-
ther Du
Halde
gives us
some ex-
cellent
extracts.

THE legislators of China went farther (ⁿ). They confounded together their religion, laws, manners, and customs; all those were morals, all these were virtue. The precepts relating to these four points were what they called rites; and it was in the exact observance of these that the Chinese government triumphed. They spent their whole youth in learning them, their whole life in their practice. They were taught by their men of learning, they were inculcated by the magistrates; and as they included all the ordinary actions of life, when they found the means of making them strictly observed, China was well governed.

Two things have contributed to the ease with which these rites are engraved on the hearts and minds of the Chinese; the one, the difficulty of writing, which during the greatest part of their lives wholly employs their mind *, because it is necessary to prepare them to read and understand the books in which they are comprized; the other, that the ritual precepts having nothing in them, that is spiritual, but being merely rules of common practice, they are more adapted to convince and strike the mind than things merely intellectual.

Those princes who instead of governing by these rites, governed by the force of punishments, wanted

* It is this which has established emulation, which has banished laziness, and cultivated a love of learning.

to accomplish that by punishments, which it is not in their power to produce, that is, to give habits of morality. By punishments a subject is very justly cut off from society, who having lost the purity of his manners, violates the laws; but if all the world were to lose their moral habits, would these re-establish them? Punishments may be justly inflicted to put a stop to many of the consequences of the general evil, but it will not remove the evil itself. Thus when the principles of the Chinese government were discarded, and morality lost, the state fell into anarchy, and revolutions were seen to take place.

C H A P. XVIII.

A Consequence drawn from the preceding Chapter.

FROM hence it follows that the laws of China are not destroyed by conquest. Their customs, manners, laws, and religion, being the same thing, they cannot change all these at once; and as it will happen, that either the conqueror or the conquered must change, in China it has always been the conqueror. For the manners of the conquering nations not being its customs, nor its customs its laws, nor its laws its religion, it has been more easy for them to conform by degrees to the vanquished people, than the vanquished people to them.

There still follows from hence a very unhappy consequence, which is, that it is almost impossible for * Christianity ever to be established in China.

* See the reasons given by the Chinese magistrates in their decrees for proscribing the christian religion. *Edifying Letters, 17th Collect.*

T H E S P I R I T

The vows of virginity, the assembling of women in churches, their necessary communication with the ministers of religion, their participation in the sacraments, auricular confession, extreme unction, the marriage of only one wife, all these overturn the manners and customs of the country, and with the same blow strike at their religion and laws.

The christian religion by the establishment of charity, by a public worship, by a participation of the same sacraments, seems to demand, that all should be united; while the rites of China seem to ordain that all should be separated.

C H A P. XIX.

How this Union of Religion, Laws, Manners and Customs, amongst the Chinese was produced.

TH E principal object of government which the Chinese legislators had in view, was the peace and tranquillity of the empire: And subordination appeared to them as the most proper means to maintain it. Filled with this idea, they believed it their duty to inspire a respect for fathers, and therefore assembled all their power to effect it. They established an infinite number of rites and ceremonies to do them honor when living, and after their death. It was impossible for them to pay such honors to deceased parents, without being led to honor the living. The ceremonies at the death of a father were more nearly related to religion, those for a living father had a greater relation to the laws, manners, and customs; however these were only parts of the same code, but this code was very extensive.

A vene-

A veneration for fathers was necessarily connected with a suitable respect for all who represented fathers, such as old men, masters, magistrates, and the emperor. This respect for fathers, supposed a return of love towards children, and consequently the same return from old men to the young, from magistrates to those who were under their jurisdiction, and from the emperor to his subjects. This formed the rites, and these rites the general spirit of the nation.

We shall now shew the relation which things in appearance the most indifferent, may have to the fundamental constitution of China. This empire is formed on the plan of the government of a family. If you diminish the paternal authority, or even if you retrench the ceremonies, which express your respect for it, you weaken the reverence due to magistrates, who are considered as fathers; nor would the magistrates have the same care of the people whom they ought to consider as their children; and that tender relation which subsists between the prince and his subjects, would insensibly be lost. Retrench but one of these habits, and you overturn the state. It is a thing in itself very indifferent whether the daughter-in-law rises every morning to pay such and such duties to her mother in law: but if we consider that these exterior habits incessantly revive an idea necessary to be imprinted on all minds, an idea that forms the governing spirit of the empire, we shall see that it is necessary that such, or such a particular action be performed.

CHAP. XX.

An Explication of a Paradox relating to the Chinese.

BOOK
XIX.
Chap. 20.

IT is very remarkable that the Chinese whose lives are guided by rites, are nevertheless the greatest cheats upon earth. This appears chiefly in their trade, which in spite of its natural tendency, has never been able to make them honest. He who buys of them, ought to carry with him his own (*) weights, every merchant having three sorts, the one heavy for buying, another light for selling, and another of the true standard for those who are upon their guard. It is possible, I believe, to explain this contradiction.

(*) Lange's
Journal in
1721, and
1722, in
Voyages
to the
north, vol.
3. p. 363.

The legislators of China had two objects in view; they were desirous that the people should be submissive and peaceful, and that they should also be laborious and industrious. By the nature of the soil and climate, their subsistence is very precarious; nor can it be any other way secured, than by the assistance of industry and labour.

When every one obeys, and every one is employed, the state is in a happy situation. It is necessity, and perhaps the nature of the climate, that has given to the Chinese an inconceivable greediness for gain, and laws have never been made to put a stop to it. Every thing has been forbidden, when acquired by acts of violence; every thing permitted, when obtained by artifice or labour. Let us not then compare the morals of China with those of Europe. Every one in China is obliged to be attentive to what will be for his

his advantage; if the cheat has been watchful over his own interest, he who is the dupe ought to have thought of his. At Sparta they were permitted to steal; in China, they are suffered to deceive.

Book
XIX.
Chap. 21,
& 22.

C H A P. XXI.

How the Laws ought to have a Relation to Manners and Customs.

IT is only singular institutions which thus confound laws, manners, and customs, things naturally distinct and separate: but tho' they are things in themselves different, there is nevertheless a great relation between them.

Solon being asked if the laws he had given to the Athenians, were the best, he replied, "I have given them the best, they were able to bear." A fine expression, that ought to be perfectly understood by all legislators! When Divine Wisdom said to the Jews, "I have given you precepts which are not good," this signified that they had only a relative goodness; which is the sponge that wipes out all the difficulties that are to be found in the law of Moses.

✓
Greek
xx.
25-
and also
premised
vii. 21
2 on,
ii. 21
xx. 33

C H A P. XXII.

The same Subject continued.

WHEN a people have pure and regular manners, their laws become simple and natural. Plato (P) says that Rhadamanthus, who governed a people extremely religious, finished every

Of
Laws, lib.
12.

BOOK
XIX.
Chap. 23,
& 24.
(^q) Of
Laws,
l. 12.

process with extraordinary dispatch, administering only the oath on every accusation. But says the same Plato (^q), when a people are not religious, we should never have recourse to an oath, except he who swears is entirely disinterested, as in the case of a judge and a witness.

C H A P. XXIII.

How the Laws are founded on the Manners of a People.

AT the time when the manners of the Romans were pure, they had no particular law against the embezzlement of the public money. When this crime began to appear, it was thought so infamous, that to be condemned to restore (^r) what they had taken, was considered as a sufficient disgrace: for a proof of this, see the sentence of L. Scipio (^r).

(^r) *In sim-
plum.*

(^r) Livy,
l. 38.

C H A P. XXIV.

The same Subject continued.

THE laws which gave the right of tutelage to the mother, were most attentive to the preservation of the infant's person; those which gave it to the next heir, were most attentive to the preservation of the estate. When the manners of a people are corrupted, it is much better to give the tutelage to the mother. Amongst those whose laws confide in the manners of the subjects, the guardianship is given either to the next heir, or to the mother, and sometimes to both.

If we reflect on the Roman laws, we shall find that the spirit of these was conformable to what I have advanced. At the time when the laws of the twelve tables were made, the manners of the Romans were most admirable. The guardianship was given to the nearest relation of the infant, from a consideration that he ought to have the trouble of the tutelage, who might enjoy the advantage of possessing the inheritance. They did not imagine the life of the heir in danger, tho' it was put into a person's hands who would reap advantage by his death. But when the manners of Rome were changed, its legislators changed their conduct. If in the pupillary substitution, say Caius ⁽¹⁾ and Justinian ⁽²⁾, the testator is afraid, that the substitute will lay any snares for the pupil, he may leave the vulgar * substitution open, and put the pupillary into a part of the testament, which cannot be opened till after a certain time. These fears and precautions were unknown to the primitive Romans,

Book
XIX.
Chap. 25.

⁽¹⁾Institut.
Lib. 2. tit.
6. §. 2.
Ozel's

compile-
ment, at
Leyden,
in 1658.

⁽²⁾Institut.
l. 2. de pu-
pil substit.
§. 3.

C H A P. XXV.

The same Subject continued.

THE Roman law gave the liberty of making presents before marriage; after the marriage they were not allowed. This was founded on the manners of the Romans, who were led to marriage, only by frugality, simplicity, and modesty; but who might suffer themselves to be

* The form of the vulgar substitution ran thus; If such a one is unwilling to take the inheritance, I substitute in his stead, &c. the pupillary substitution, If such a one dies before he arrives at the age of puberty, I substitute, &c.

BOOK seduced by domestic cares, by complaisance and the
XIX. happiness of a whole life.

Chap. 26. A law of the (*) Visigoths forbade the man giving
(*) Lib. 3. more to the woman he was to marry than the
tit. 1. §. 5. tenth part of his substance, and his giving her
any thing during the first year of their marriage.
This also took its rise from the manners of the
country. The legislators were willing to put a
stop to that Spanish ostentation, which only led
them to display an excessive liberality in acts of
magnificence.

The Romans, by their laws, put a stop to some
of the inconveniencies which arose from the most
durable empire in the world, that of virtue; the
Spaniards by theirs, would prevent the bad ef-
fects of a tyranny, the most frail and fleeting, that
of beauty.

CHAP. XXVI.

The same Subject continued.

(v) Leg. 8. THE law (v) of Theodosius and Valentinian
cod. de drew the causes of repudiation from the
Repudiis. ancient manners (z) and customs of the Romans. It
(z) And the law of the placed in the number of these causes the behaviour
12 tables. of a husband * who beat his wife, in a manner
See Cice- that disgraced the character of a freeborn woman.
ro's 2d Philippic. This cause was omitted in the following laws (a):
(a) In Nov. 117. for their manners were in this respect changed:
c. 14. the eastern customs had banished those of Europe.
The first eunuch of the empress, wife to Justinian
II. threatened her, says the historian, to chastise
her in the same manner as children are punished at

* *Si verberibus quæ ingenuis aliena sunt, afficientem probaverit.*

school. Nothing but established manners, or those which they were seeking to establish, could raise even an idea of this kind.

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XIX.
Chap. 27.

We have seen how the laws follow the manners of a people: let us now see how the manners follow the laws.

C H A P. XXVII.

How the Laws contribute to form the Manners, Customs, and Character of a Nation.

THE customs of an enslaved people are a part of their servitude; those of a free people are a part of their liberty.

I have spoken in the eleventh Book ^(²) of a free ^(²) Ch. 6. people, and have given the principles of their constitution: let us now see the effects which follow from this liberty, the character it is capable of forming, and the customs which naturally result from it.

I don't deny that the climate may have produced great part of the laws, manners, and customs of this nation; but I maintain that its manners and customs have a close connection with its laws.

As there are in this state two visible powers, the legislative and executive, and as every citizen has a will of his own, and may at pleasure assert his independence; most men have a greater fondness for one of these powers than for the other, and the multitude have commonly neither equity nor sense enough, to shew an equal affection to both.

As the executive power, by disposing of all employments, may give great hopes, and no fears, every man who obtains any favour from it, is ready

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to espouse its cause; while it is liable to be attacked by those who have nothing to hope from it.

All the passions being unrestrained, hatred, envy, jealousy, and an ambitious desire of riches and honors, appear in their full extent: were it otherwise, the state would be in the condition of a man weakened by sickness, who is without passions, because he is without strength.

The hatred which arises between the two parties will always subsist, because it will always be impotent.

These parties being composed of freemen, if the one becomes too powerful for the other, as a consequence of liberty, this other is depressed; while the citizens take the weaker side, with the same readiness as the hands lend their assistance to remove the infirmities and disorders of the body.

Every individual is independent, and being commonly led by caprice and humour, frequently changes parties; he abandons one where he left all his friends, to unite himself to another in which he finds all his enemies: so that in this nation it frequently happens that the people forget the laws of friendship, as well as those of hatred.

The sovereign is here in the same case with a private person, and against the ordinary maxims of prudence, is frequently obliged to give his confidence to those who have most offended him: and to disgrace the men who have best served him; he does that by necessity which other princes do by choice.

As we are afraid of being deprived of the blessing we already enjoy, and which may be disguised and misrepresented to us; and as fear always enlarges objects;

objects; the people are uneasy under such a situation, and believe themselves in danger, even in those moments when they are most secure.

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As those who with the greatest warmth oppose the executive power, dare not avow the self-interested motives of their opposition, so much the more do they increase the terrors of the people, who can never be certain whether they are in danger or not. But even this contributes to make them avoid the real dangers to which they may in the end be exposed.

But the legislative body having the confidence of the people, and being more enlightened than they, may calm their uneasiness, and make them recover from the bad impressions they have entertained.

This is the great advantage which this government has over the ancient democracies, in which the people had an immediate power; for when they were moved and agitated by the orators, these agitations always produced their effects.

But when an impression of terror has no certain object, it produces only clamours and abuse; it has however, this good effect, that it puts all the springs of government in motion, and fixes the attention of every citizen. But if it arises from a violation of the fundamental laws, it is sullen, cruel, and produces the most dreadful catastrophes.

Soon we should see a frightful calm, during which every one would unite against that power which had violated the laws.

If when the uneasiness proceeds from no certain object, some foreign power should threaten the state, or put its prosperity or its glory in danger, their little interests of party would then yield to the
more

more strong and binding, and there would be a perfect coalition in favour of the executive power.

But if the disputes were occasioned by a violation of the fundamental laws, and a foreign power should appear; there would be a revolution that would neither alter the constitution nor the form of government. For a revolution formed by liberty becomes a confirmation of liberty.

A free nation may have a deliverer; a nation enslaved can have only another oppressor.

For whoever has a power sufficient to dethrone an absolute prince, has a power sufficient to enable him to become absolute himself.

As the enjoyment of liberty, and even its support and preservation, consists in every man's being allowed to speak his thoughts and to lay open his sentiments; a citizen in this state will say or write whatever the laws do not expressly forbid to be said or wrote.

A people like this being always in a ferment, are more easily conducted by their passions than by reason, which never produces any great effects in the mind of man; it is therefore easy for those who govern, to make them undertake enterprizes contrary to their true interest.

This nation is passionately fond of liberty, because this liberty is true and real; and it is possible for it, in its defence, to sacrifice its wealth, its ease, its interest, and to support the burthen of the most heavy taxes, even such as a despotic prince durst not lay upon his subjects.

But as the people have a certain knowledge of the necessity of submitting to them, they pay from the well founded hope of their soon paying them no longer;

longer ; their burthens are heavy, but they do not feel their weight : while in other states the uneasiness is infinitely greater than the evil.

This nation must therefore have a fixed and certain credit, because it borrows of itself and pays itself. It is possible for it to undertake things above its natural strength, and employ against its enemies immense sums of fictitious riches, which the credit and nature of its government may render real.

To preserve its liberty, it borrows of its subjects; and its subjects seeing that its credit would be lost, if ever it was conquered, have a new motive to make fresh efforts in defence of its liberty.

This nation inhabiting an island is not fond of conquering, because it would be weakened by distant conquests: especially as the soil of the island is good; because it has then no need of enriching itself by war; and as no citizen is subject to another, each sets a greater value on his own liberty, than on the glory of one, or any number of citizens.

Military men are there regarded as belonging to a profession which may be useful, but is often dangerous; and as men whose very services are burthensome to the nation: civil qualifications are therefore more esteemed than the military.

This nation, which liberty and the laws render easy, on being freed from pernicious prejudices, is become a trading people; and as it has some of those primitive materials of trade, out of which are made such things as from the artist's hand receive a considerable value, it has made settlements proper to procure the enjoyment of this gift of heaven in its fullest extent.

As

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As this nation is situated towards the north, and has many superfluous commodities; it must want also a great number of merchandizes which its climate will not produce: it has therefore entered into a great and necessary commerce with the southern nations; and making choice of those states whom it is willing to favour with an advantageous commerce, it enters into such treaties with the nation it has chosen, as are reciprocally useful to both.

In a state, where on the one hand the opulence is extreme, and on the other the taxes are excessive, they are hardly able to live on a small fortune without industry: Many therefore under a pretence of travelling or of health, retire from amongst them, and go in search of plenty, even to the countries of slavery.

A trading nation has a prodigious number of little particular interests; it may then injure or be injured, an infinite number of different ways. Thus it becomes immoderately jealous, and is more afflicted at the prosperity of others, than it rejoices at its own.

And its laws, otherwise mild and easy, may be so rigid with respect to the trade and navigation carried on with it, that it may seem to trade only with enemies.

If this nation sends colonies abroad, it must rather be to extend its commerce than its dominion.

As men are fond of introducing into other places what they have established amongst themselves, they have given the people of their colonies the form of their own government; and this government carrying prosperity along with it, they have formed great nations in the forests they were sent to inhabit.

Having

Having formerly subdued a neighbouring nation, which by its situation, the goodness of its ports, and the nature of its products, inspires it with jealousy; tho' it has given this nation its own laws, yet it holds it in great dependance: the subjects there are free, and the state itself in slavery.

The conquered state has an excellent civil government, but it is oppressed by the law of nations; laws are imposed by one nation on the other, and these are such as render its prosperity precarious, and dependent on the will of a master.

The ruling nation inhabiting a large island, and being in possession of a great trade, hath with extraordinary ease grown powerful at sea; and as the preservation of its liberties require that it should have neither strong holds, nor fortresses, nor land forces, it has occasion for a formidable navy to preserve it from invasions; a navy which must be superior to that of all other powers, who employing their treasures in wars at land, have not sufficient for those at sea.

The empire of the sea has always given those who have enjoyed it a natural pride; because thinking themselves capable of extending their insults wherever they please, they imagine that their power is as boundless as the ocean.

This nation has a great influence in the affairs of its neighbours; for as its power is not employed in conquests, its friendship is more courted, and its resentment more dreaded, than could naturally be expected from the inconstancy of its government, and its domestic commotions.

Thus it is the fate of the executive power to be almost always disturbed at home and respected abroad.

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Should this nation on some occasions become the center of the negotiations of Europe, probity and good faith would be carried to a greater height than in other places; because the ministers being frequently obliged to justify their conduct before a popular council, their negotiations could not be secret; and they would be forced to be, in this respect, a little more honest.

Besides, as they would in some sort be answerable for the events which an irregular conduct might produce, the surest, the safest way for them, would be to take the straightest path.

If the nobles were formerly possessed of an immoderate power, and the monarch had found the means of abasing them by raising the people; the point of extreme servitude must have been that between humbling the nobility, and that in which the people began to feel their power.

Thus this nation having been formerly subject to an arbitrary power, on many occasions preserves the stile of it, in such a manner, as to let us frequently see upon the foundation of a free government, the form of an absolute monarchy.

With regard to religion, as in this state every subject has a free will, and must consequently be either conducted by the light of his own mind or by the caprices of fancy; it necessarily follows that every one must either look upon all religion with indifference, by which means they must be led to embrace the established religion; or that they must be zealous for religion in general, by which means the number of sects must be encreased.

It is not impossible but that in this nation there may be men of no religion, who would not
however

however bear to be obliged to change that which they would chuse, if they cared to chuse any; for they would immediately perceive that their lives and fortunes are not more peculiarly theirs than their manner of thinking, and that whoever would deprive them of the one, might, even with better reason, take away the other.

If amongst the different religions, there is one that has been attempted to be established by methods of slavery, it must there be odious; because as we judge of things by the appendages we join with them, it could never present itself to the mind in conjunction with the idea of liberty.

The laws against those who profess this religion could not however be of the sanguinary kind; for liberty can never inflict these sorts of punishments: but they may be so rigorous as to do all the mischief that could be done in cold blood.

It is possible that a thousand circumstances might concur to give the clergy so little credit, that other citizens may have more. Therefore instead of a separation, they have chose rather to support the same burthens as the laity, and in this respect, to make only one body with them: but as they always seek to conciliate the respect of the people, they distinguish themselves by a more retired life, a conduct more reserved, and a greater purity of manners.

The clergy not being able to protect religion, nor to be protected by it, only seek to persuade: their pens, therefore, furnish us with excellent works in proof of a revelation, and of the Providence of the Supreme Being.

Yet the state prevents the sitting of their assemblies, and does not suffer them to correct their own abuses;

abuses; it chuses thus, thro' a caprice of liberty, rather to leave their reformation imperfect, than to suffer the clergy to be the reformers.

Those dignities which make a fundamental part of the constitution are more fixed than elsewhere; but, on the other hand, the great, in this country of liberty, are nearer upon a level with the people; their ranks are more separated, and their persons more confounded.

As those who govern have a power which, in some measure, has need of fresh vigor every day, they have a greater regard for those who are useful to them, than for those who only contribute to their amusement: we see therefore fewer courtiers, flatterers and parasites, in short fewer of all those who make their own advantage of the folly of the great.

Men are less esteemed for frivolous talents and attainments, than for essential qualities; and of this kind there are but two, riches, and personal merit.

They enjoy a solid luxury, founded not on the refinements of vanity, but on that of real wants; they ask nothing of nature but what nature can bestow.

The rich enjoy a great superfluity of fortune, and yet have no relish for frivolous amusements: thus many having more wealth than opportunities of expence, employ it in a fantastical manner: in this nation they have more judgment than taste.

As they are always employed about their own interest, they have not that politeness which is founded on indolence; and they really have not leisure to attain it.

The æra of Roman politeness is the same as that of the establishment of arbitrary power. An absolute

lute government produces indolence, and indolence gives birth to politeness.

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The more people there are in a nation who require a circumspect behaviour, and a care not to displease, the more there is of politeness. But it is rather the politeness of morals than that of manners which ought to distinguish us from barbarous nations.

In a country where every man has in some sort a share in the administration of the government, the women ought scarcely to live with the men. They are therefore modest, that is, timid; and this timidity constitutes their virtue: whilst the men without a taste for gallantry plunge themselves into a debauchery which leaves them at leisure, and in the enjoyment of their full liberty.

Their laws not being made for one individual more than another, each considers himself as a monarch; and indeed the men of this nation are rather confederates than fellow subjects.

As the climate has given many persons a restless spirit and extended views, in a country where the constitution gives every man a share in its government and political interests, conversation generally turns upon politics: and we see men spend their lives in the calculation of events, which, considering the nature of things and the caprices of fortune, or rather of men, can scarcely be thought subject to the rules of calculation.

In a free nation it is very often a matter of indifference whether individuals reason well or ill; it is sufficient that they do reason: from hence springs that liberty which is a security from the effects of these reasonings.

But in a despotic government it is equally pernicious whether they reason well or ill; their reasoning is alone sufficient to shock the principle of their government.

Many people who have no desire of pleasing, abandon themselves to their own particular humour; most of those who have wit and ingenuity are ingenious in tormenting themselves; filled with a contempt or disgust for all things, they are unhappy amidst all the blessings that can possibly contribute to their happiness.

As no subject fears another, the whole nation is proud; for the pride of kings is founded only on their independence.

Free nations are haughty; others may more properly be called vain.

But as these men who are naturally so proud, live much by themselves, they are commonly bashful when they come among strangers; and we frequently see them behave for a considerable time with an odd mixture of pride and ill-placed shame.

The character of the nation is more particularly discovered in their literary performances, in which we find the men of thought and deep meditation.

As society gives us a sense of the ridicules of mankind, retirement renders us more fit to reflect on the folly of vice. Their satyrical writings are sharp and severe, and we find amongst them many Juvenals, without discovering one Horace.

In monarchies extremely absolute historians betray the truth, because they are not at liberty to speak it; in states remarkably free, they betray the truth because of their liberty itself, which always produces divisions, every one becoming as great a slave to the prejudices

prejudices of his faction, as he could be in a despotic state.

Their poets have more frequently an original rudeness of invention, than that particular kind of delicacy which springs from taste; we there find something which approaches nearer to the bold strength of a Michael Angelo, than to the softer graces of a Raphael.

End of the FIRST VOLUME.

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10/13/05



*BOOKS lately printed for J. Nourse, at the Lamb
against Katharine-street in the Strand, London.*

1. **C**RITICAL Reflections on Poetry, Painting, and Musick. With an Enquiry into the Rise and Progress of the Theatrical Entertainments of the Ancients. Written in French by the Abbé Du Bos, Member and perpetual Secretary of the French Academy. Translated into English by Thomas Nugent, Gent. from the Fifth Edition, revised, corrected, and enlarged by the Author, 3 Vols. Octavo. 1748.

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